
TEXAS REGISTER

Volume 31 Number 11

March 17, 2006

Pages 1829-2334



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff

Ada Aulet
Leti Benavides
Dana Blanton
Belinda Bostick
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Diana Muniz

IN THIS ISSUE

GOVERNOR

Appointments	1839
--------------------	------

ATTORNEY GENERAL

Request for Opinions	1841
----------------------------	------

TEXAS ETHICS COMMISSION

Advisory Opinion Request.....	1843
-------------------------------	------

PROPOSED RULES

TEXAS HISTORICAL COMMISSION

TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM	
13 TAC §12.5	1845
13 TAC §12.7	1845
13 TAC §12.9	1847

RAILROAD COMMISSION OF TEXAS

REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)	
16 TAC §§13.2 - 13.4	1849
16 TAC §§13.25, 13.35, 13.36, 13.38.....	1850
16 TAC §§13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.80	1851
16 TAC §13.80.....	1856
16 TAC §§13.92 - 13.94, 13.102	1856
16 TAC §13.141	1857
16 TAC §13.183	1857
REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)	
16 TAC §§14.2007, 14.2010, 14.2019 - 14.2021, 14.2034, 14.2043, 14.2049, 14.2052.....	1859
16 TAC §14.2021.....	1863
16 TAC §14.2310.....	1864

TEXAS BOARD OF PROFESSIONAL ENGINEERS

LICENSING

22 TAC §133.11	1864
22 TAC §133.25	1865
22 TAC §133.27	1866
22 TAC §133.43	1867
22 TAC §133.69	1868

COMPLIANCE AND PROFESSIONALISM

22 TAC §137.77	1870
----------------------	------

TEXAS OPTOMETRY BOARD

INTERPRETATIONS

22 TAC §279.6.....	1871
--------------------	------

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

GENERAL AIR QUALITY RULES

30 TAC §§101.501 - 101.504, 101.506, 101.508	1872
30 TAC §101.601, §101.602.....	1884

FEDERAL OPERATING PERMITS PROGRAM

30 TAC §122.10, §122.12.....	1897
30 TAC §122.120.....	1900
30 TAC §122.410.....	1901
30 TAC §§122.420, 122.422, 122.424, 122.426, 122.428.....	1901
30 TAC §§122.440, 122.442, 122.444, 122.446, 122.448.....	1902

GENERAL LAND OFFICE

COASTAL AREA PLANNING

31 TAC §15.35	1903
---------------------	------

TEXAS DEPARTMENT OF PUBLIC SAFETY

ORGANIZATION AND ADMINISTRATION

37 TAC §1.60.....	1907
-------------------	------

COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

37 TAC §4.36.....	1908
-------------------	------

CRIMINAL LAW ENFORCEMENT

37 TAC §§5.51 - 5.70	1909
----------------------------	------

DRIVER LICENSE RULES

37 TAC §15.89.....	1912
--------------------	------

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

24-HOUR CARE LICENSING

40 TAC §§720.24 - 720.36, 720.38 - 720.46, 720.48 - 720.54, 720.56 - 720.60, 720.63, 720.65 - 720.67	1913
40 TAC §§720.117 - 720.126.....	1914
40 TAC §§720.131 - 720.137	1914
40 TAC §§720.201 - 720.207	1915
40 TAC §§720.231 - 720.248	1915
40 TAC §§720.301 - 720.336	1916
40 TAC §§720.361 - 720.374	1916
40 TAC 720.401 - 720.403, 720.405 - 720.423, 720.426 - 720.432, 720.440 - 720.446, 720.448, 720.449, 720.501 - 720.508, 720.512, 720.514, 720.515, 720.520 - 720.530, 720.535 - 720.537, 720.540 - 720.546, 720.548 - 720.556, 720.558 - 720.560, 720.570 - 720.574.....	1917
40 TAC §§720.600 - 720.608	1918
40 TAC §720.620.....	1919

40 TAC §720.701, §720.702.....	1919
40 TAC §§720.901 - 720.923	1920
40 TAC §§720.1001 - 720.1013, 720.1101.....	1920
40 TAC §§720.1501 - 720.1506	1920
40 TAC §720.9801.....	1921
GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS	
40 TAC §748.1, §748.3.....	1929
40 TAC §748.41, §748.43.....	1929
40 TAC §§748.61, 748.63, 748.65, 748.67, 748.69, 748.71, 748.73, 748.75.....	1931
40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111.....	1933
40 TAC §748.131, §748.133.....	1934
40 TAC §748.161, §748.163.....	1935
40 TAC §748.191.....	1935
40 TAC §§748.231, 748.233, 748.235, 748.237, 748.239.....	1935
40 TAC §§748.301, 748.303, 748.305, 748.307, 748.309, 748.311, 748.313, 748.315.....	1937
40 TAC §748.341.....	1938
40 TAC §748.361, §748.363.....	1938
40 TAC §§748.391, 748.393, 748.395, 748.397, 748.399, 748.401.....	1939
40 TAC §§748.431, 748.433, 748.435.....	1940
40 TAC §§748.501, 748.503, 748.505, 748.507, 748.509, 748.511.....	1940
40 TAC §§748.531, 748.533, 748.535, 748.537, 748.539.....	1941
40 TAC §§748.561, 748.563, 748.565, 748.567, 748.569, 748.571, 748.573, 748.575.....	1942
40 TAC §§748.601, 748.603, 748.605, 748.607.....	1943
40 TAC §§748.681, 748.683, 748.685.....	1944
40 TAC §§748.721, 748.723, 748.725, 748.727, 748.729, 748.731.....	1945
40 TAC §748.801.....	1946
40 TAC §748.831, §748.833.....	1946
40 TAC §§748.861, 748.863, 748.865, 748.867, 748.869.....	1947
40 TAC §§748.881, 748.883, 748.885.....	1948
40 TAC §748.901, §748.903.....	1948
40 TAC §§748.931, 748.933, 748.935, 748.937, 748.939, 748.941, 748.943, 748.945, 748.947, 748.949.....	1949
40 TAC §§748.981, 748.983, 748.985, 748.987, 748.989.....	1951
40 TAC §§748.1001, 748.1003, 748.1005, 748.1007, 748.1009, 748.1011, 748.1013, 748.1015, 748.1017, 748.1019, 748.1021, 748.1023.....	1952

40 TAC §§748.1101, 748.1103, 748.1105, 748.1107, 748.1109, 748.1111, 748.1113, 748.1115, 748.1117, 748.1119	1953
40 TAC §§748.1201, 748.1203, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1221, 748.1223, 748.1225, 748.1227.....	1955
40 TAC §§748.1261, 748.1263, 748.1265, 748.1267, 748.1269, 748.1271.....	1958
40 TAC §§748.1301, 748.1303, 748.1305.....	1959
40 TAC §§748.1331, 748.1333, 748.1335, 748.1337, 748.1339, 748.1341, 748.1343, 748.1345, 748.1347, 748.1349, 748.1351....	1960
40 TAC §§748.1381, 748.1383, 748.1385, 748.1387, 748.1389...	1961
40 TAC §§748.1431, 748.1433, 748.1435, 748.1437, 748.1439, 748.1441, 748.1443, 748.1445.....	1962
40 TAC §748.1481.....	1963
40 TAC §§748.1501, 748.1503, 748.1505.....	1964
40 TAC §§748.1531, 748.1533, 748.1535, 748.1537, 748.1539, 748.1541, 748.1543, 748.1545, 748.1547, 748.1549, 748.1551....	1964
40 TAC §§748.1581, 748.1583, 748.1585.....	1966
40 TAC §§748.1611, 748.1613, 748.1615, 748.1617	1966
40 TAC §§748.1631, 748.1633, 748.1635.....	1967
40 TAC §748.1661	1968
40 TAC §§748.1691, 748.1693, 748.1695, 748.1697, 748.1699, 748.1701, 748.1703, 748.1705, 748.1707, 748.1709.....	1968
40 TAC §§748.1741, 748.1743, 748.1745, 748.1747, 748.1749, 748.1751, 748.1753, 748.1755, 748.1757, 748.1759, 748.1761, 748.1763, 748.1765.....	1969
40 TAC §§748.1791, 748.1793, 748.1795.....	1971
40 TAC §§748.1821, 748.1823, 748.1825.....	1971
40 TAC §748.1901.....	1972
40 TAC §§748.1931, 748.1933, 748.1935, 748.1937, 748.1939, 748.1941, 748.1943, 748.1945.....	1972
40 TAC §§748.2001, 748.2003, 748.2005, 748.2007, 748.2009...	1973
40 TAC §748.2051, §748.2053.....	1974
40 TAC §748.2101, §748.2103.....	1974
40 TAC §748.2151.....	1975
40 TAC §§748.2201, 748.2203, 748.2205.....	1976
40 TAC §748.2231, §748.2233.....	1976
40 TAC §§748.2251, 748.2253, 748.2255, 748.2257, 748.2259, 748.2261.....	1977
40 TAC §§748.2301, 748.2303, 748.2305, 748.2307, 748.2309, 748.2311.....	1978
40 TAC §748.2401.....	1979
40 TAC §§748.2451, 748.2453, 748.2455, 748.2457, 748.2459, 748.2461, 748.2463.....	1980
40 TAC §§748.2501, 748.2503, 748.2505, 748.2507	1981

40 TAC §748.2551, §748.2553.....	1982	40 TAC §748.4111	2011
40 TAC §§748.2601, 748.2603, 748.2605	1983	40 TAC §§748.4201, 748.4203, 748.4205, 748.4207, 748.4209, 748.4211, 748.4213.....	2011
40 TAC §748.2651, §748.2653.....	1983	40 TAC §748.4231	2012
40 TAC §§748.2701, 748.2703, 748.2705	1984	40 TAC §§748.4261, 748.4263, 748.4265, 748.4267, 748.4269 ...	2013
40 TAC §§748.2751, 748.2753, 748.2755, 748.2757	1985	40 TAC §748.4301	2014
40 TAC §§748.2801, 748.2803, 748.2805, 748.2807	1986	40 TAC §748.4331	2014
40 TAC §§748.2851, 748.2853, 748.2855	1986	40 TAC §§748.4361, 748.4363, 748.4365, 748.4367, 748.4369, 748.4371.....	2015
40 TAC §§748.2901, 748.2903, 748.2905, 748.2907, 748.2909 ...	1987	40 TAC §§748.4391, 748.4393, 748.4395, 748.4397	2015
40 TAC §748.2951, §748.2953.....	1988	40 TAC §748.4401, §748.4403.....	2016
40 TAC §§748.3001, 748.3003, 748.3005, 748.3007, 748.3009, 748.3011, 748.3013, 748.3015, 748.3017, 748.3019, 748.3021	1989	40 TAC §748.4431	2017
40 TAC §§748.3061, 748.3063, 748.3065	1990	40 TAC §§748.4461, 748.4463, 748.4465, 748.4467, 748.4469, 748.4471, 748.4473.....	2017
40 TAC §§748.3101, 748.3103, 748.3105, 748.3107, 748.3109, 748.3111, 748.3113, 748.3115, 748.3117, 748.3119	1990		
40 TAC §748.3161	1991	CHILD-PLACING AGENCIES	
40 TAC §§748.3191, 748.3193, 748.3195	1992	40 TAC §749.1, §749.3	2029
40 TAC §§748.3231, 748.3233, 748.3235, 748.3237, 748.3239 ...	1992	40 TAC §749.41, §749.43	2030
40 TAC §748.3271, §748.3273.....	1993	40 TAC §§749.61, 749.63, 749.65, 749.67, 749.69, 749.71	2032
40 TAC §§748.3301, 748.3303, 748.3305, 748.3307, 748.3309, 748.3311, 748.3313, 748.3315, 748.3317.....	1994	40 TAC §§749.101, 749.103, 749.105, 749.107	2034
40 TAC §§748.3351, 748.3353, 748.3355, 748.3357, 748.3359, 748.3361, 748.3363, 748.3365, 748.3367, 748.3369.....	1995	40 TAC §749.131, §749.133	2035
40 TAC §§748.3391, 748.3393, 748.3395, 748.3397, 748.3399 ...	1997	40 TAC §§749.161, 749.163, 749.165.....	2036
40 TAC §748.3421	1998	40 TAC §§749.191, 749.193, 749.195, 749.197, 749.199.....	2036
40 TAC §748.3441, §748.3443.....	1998	40 TAC §§749.231, 749.233, 749.235, 749.237, 749.239, 749.241, 749.243, 749.245.....	2037
40 TAC §§748.3471, 748.3473, 748.3475, 748.3477, 748.3479, 748.3481.....	1999	40 TAC §749.271, §749.273.....	2038
40 TAC §§748.3521, 748.3523, 748.3525, 748.3527, 748.3529, 748.3531, 748.3533, 748.3535.....	2000	40 TAC §749.301, §749.303	2039
40 TAC §§748.3561, 748.3563, 748.3565, 748.3567	2001	40 TAC §§749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359.....	2039
40 TAC §§748.3601, 748.3603, 748.3605, 748.3607	2002	40 TAC §§749.421, 749.423, 749.425.....	2042
40 TAC §§748.3701, 748.3703, 748.3705, 748.3707, 748.3709, 748.3711, 748.3713, 748.3715, 748.3717, 748.3719.....	2003	40 TAC §§749.501, 749.503, 749.505, 749.507, 749.509, 749.511, 749.513, 749.515.....	2043
40 TAC §§748.3751, 748.3753, 748.3755, 748.3757, 748.3759, 748.3761, 748.3763, 748.3765, 748.3767.....	2004	40 TAC §§749.531, 749.533, 749.535, 749.537	2044
40 TAC §§748.3801, 748.3803, 748.3805, 748.3807	2005	40 TAC §§749.551, 749.553, 749.555.....	2045
40 TAC §§748.3841, 748.3843, 748.3845, 748.3847, 748.3849, 748.3851, 748.3853, 748.3855, 748.3857, 748.3859, 748.3861....	2006	40 TAC §§749.571, 749.573, 749.575, 749.577, 749.579, 749.581, 749.583, 749.585, 749.587.....	2045
40 TAC §748.3891, §748.3893.....	2007	40 TAC §§749.601, 749.603, 749.605, 749.607, 749.609, 749.611.....	2046
40 TAC §§748.3931, 748.3933, 748.3935, 748.3937	2008	40 TAC §§749.631, 749.633, 749.635, 749.637	2047
40 TAC §§748.4001, 748.4003, 748.4005, 748.4007, 748.4009, 748.4011, 748.4013.....	2009	40 TAC §§749.661, 749.663, 749.665, 749.667, 749.669, 749.671, 749.673, 749.675, 749.677, 749.679.....	2048
40 TAC §§748.4041, 748.4043, 748.4045, 748.4047.....	2010	40 TAC §§749.721, 749.723, 749.725, 749.727	2050
40 TAC §748.4081, §748.4083.....	2010	40 TAC §749.741, §749.743.....	2050

40 TAC §§749.761, 749.763, 749.765, 749.767, 749.769, 749.771.....	2051	40 TAC §§749.1951, 749.1953, 749.1955, 749.1957, 749.1959, 749.1961.....	2081
40 TAC §749.801.....	2052	40 TAC §749.2001.....	2082
40 TAC §749.831, §749.833.....	2052	40 TAC §§749.2051, 749.2053, 749.2055, 749.2057, 749.2059, 749.2061, 749.2063.....	2083
40 TAC §§749.861, 749.863, 749.865, 749.867, 749.869.....	2053	40 TAC §§749.2101, 749.2103, 749.2105, 749.2107.....	2084
40 TAC §§749.881, 749.883, 749.885.....	2053	40 TAC §749.2151, §749.2153.....	2085
40 TAC §749.901, §749.903.....	2054	40 TAC §§749.2201, 749.2203, 749.2205.....	2085
40 TAC §§749.931, 749.933, 749.935, 749.937, 749.939, 749.941, 749.943, 749.945, 749.947, 749.949.....	2055	40 TAC §749.2231, §749.2233.....	2086
40 TAC §§749.981, 749.983, 749.985, 749.987, 749.989.....	2057	40 TAC §749.2281, §749.2283.....	2087
40 TAC §§749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1021.....	2057	40 TAC §§749.2301, 749.2303, 749.2305.....	2087
40 TAC §§749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115.....	2060	40 TAC §§749.2331, 749.2333, 749.2335, 749.2337, 749.2339...2088	
40 TAC §§749.1131, 749.1133, 749.1135, 749.1137.....	2061	40 TAC §749.2381, §749.2383.....	2089
40 TAC §§749.1151, 749.1153, 749.1155.....	2062	40 TAC §§749.2401, 749.2403, 749.2405.....	2089
40 TAC §§749.1181, 749.1183, 749.1185, 749.1187, 749.1189....	2063	40 TAC §§749.2441, 749.2443, 749.2445, 749.2447, 749.2449, 749.2451.....	2090
40 TAC §§749.1251, 749.1253, 749.1255.....	2064	40 TAC §§749.2471, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487, 749.2489, 749.2491, 749.2493.....	2091
40 TAC §749.1281.....	2064	40 TAC §§749.2521, 749.2523, 749.2525.....	2093
40 TAC §§749.1301, 749.1303, 749.1305, 749.1307, 749.1309, 749.1311, 749.1313, 749.1315, 749.1317, 749.1319, 749.1321, 749.1323.....	2065	40 TAC §§749.2551, 749.2553, 749.2555, 749.2557, 749.2559, 749.2561, 749.2563, 749.2565, 749.2567.....	2093
40 TAC §§749.1331, 749.1333, 749.1335, 749.1337, 749.1339...2066		40 TAC §§749.2591, 749.2593, 749.2595, 749.2597, 749.2599...2094	
40 TAC §§749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, 749.1375, 749.1377, 749.1379.....	2067	40 TAC §§749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635.....	2096
40 TAC §§749.1401, 749.1403, 749.1405, 749.1407, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1419, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435.....	2069	40 TAC §749.2651, 749.2653, 749.2655.....	2097
40 TAC §§749.1461, 749.1463, 749.1465, 749.1467, 749.1469...2071		40 TAC §§749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813, 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825.....	2097
40 TAC §749.1501, §749.1503.....	2072	40 TAC §§749.2901, 749.2903, 749.2905, 749.2907, 749.2909, 749.2911, 749.2913, 749.2915, 749.2917.....	2099
40 TAC §749.1521, §749.1523.....	2072	40 TAC §749.2931.....	2100
40 TAC §§749.1541, 749.1543, 749.1545.....	2073	40 TAC §§749.2961, 749.2963, 749.2965, 749.2967.....	2100
40 TAC §§749.1561, 749.1563, 749.1565.....	2073	40 TAC §§749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041 ...2101	
40 TAC §749.1581, §749.1583.....	2074	40 TAC §§749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081 ...2102	
40 TAC §§749.1601, 749.1603, 749.1605, 749.1607, 749.1609, 749.1611.....	2075	40 TAC §§749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111.....	2104
40 TAC §§749.1641, 749.1643, 749.1645, 749.1647.....	2076	40 TAC §§749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149.....	2104
40 TAC §§749.1671, 749.1673, 749.1675.....	2077	40 TAC §749.3201, §749.3203.....	2106
40 TAC §§749.1801, 749.1803, 749.1805, 749.1807, 749.1809, 749.1811, 749.1813, 749.1815, 749.1817, 749.1819.....	2077	40 TAC §749.3221.....	2106
40 TAC §749.1841.....	2079	40 TAC §749.3301.....	2106
40 TAC §§749.1861, 749.1863, 749.1865.....	2079	40 TAC §§749.3321, 749.3323, 749.3325, 749.3327.....	2107
40 TAC §§749.1891, 749.1893, 749.1895.....	2080		
40 TAC §§749.1921, 749.1923, 749.1925, 749.1927.....	2080		

40 TAC §§749.3341, 749.3343, 749.3345, 749.3347, 749.3349, 749.3351, 749.3353.....	2107	40 TAC §750.601.....	2137
40 TAC §749.3371, §749.3373.....	2108	40 TAC §750.701.....	2138
40 TAC §§749.3391, 749.3393, 749.3395.....	2109	40 TAC §750.801.....	2138
40 TAC §§749.3421, 749.3423, 749.3425, 749.3427, 749.3429, 749.3431.....	2109	40 TAC §750.901.....	2138
40 TAC §§749.3461, 749.3463, 749.3465.....	2110	40 TAC §§750.1001, 750.1003, 750.1005, 750.1007, 750.1009...	2139
40 TAC §749.3501, §749.3503.....	2111	40 TAC §750.1101.....	2139
40 TAC §749.3521, §749.3523.....	2112	40 TAC §750.1201.....	2139
40 TAC §749.3571, §749.3573.....	2112		
40 TAC §749.3601.....	2113	WITHDRAWN RULES	
40 TAC §§749.3621, 749.3623, 749.3625, 749.3627, 749.3629, 749.3631, 749.3633.....	2113	TEXAS DEPARTMENT OF AGRICULTURE	
40 TAC §749.3661, §749.3663.....	2114	COTTON PEST CONTROL	
40 TAC §749.3691, §749.3693.....	2115	4 TAC §20.22.....	2141
40 TAC §§749.3721, 749.3723, 749.3725, 749.3727, 749.3729...	2115	POLYGRAPH EXAMINERS BOARD	
40 TAC §749.3741.....	2116	CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS	
40 TAC §749.3761.....	2116	22 TAC §395.7.....	2141
40 TAC §749.3801.....	2117	ADOPTED RULES	
40 TAC §749.3831.....	2117	TEXAS DEPARTMENT OF AGRICULTURE	
40 TAC §§749.3861, 749.3863, 749.3865, 749.3867, 749.3869, 749.3871.....	2117	COTTON PEST CONTROL	
40 TAC §§749.3891, 749.3893, 749.3895, 749.3897.....	2118	4 TAC §20.1.....	2143
INDEPENDENT FOSTER HOMES		4 TAC §20.20, §20.22.....	2143
40 TAC §§750.1, 750.3, 750.5.....	2127	PUBLIC UTILITY COMMISSION OF TEXAS	
40 TAC §750.41, §750.43.....	2127	SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS	
40 TAC §750.61.....	2128	16 TAC §25.454.....	2148
40 TAC §§750.101, 750.103, 750.105, 750.107.....	2128	16 TAC §25.475, §25.478.....	2151
40 TAC §750.121, §750.123.....	2129	TEXAS BOARD OF PROFESSIONAL ENGINEERS	
40 TAC §750.131, §750.133.....	2130	COMPLIANCE AND PROFESSIONALISM	
40 TAC §§750.151, 750.153, 750.155, 750.157, 750.159, 750.161, 750.163, 750.165, 750.167, 750.169, 750.171.....	2130	22 TAC §137.13.....	2157
40 TAC §§750.181, 750.183, 750.185.....	2132	ENFORCEMENT	
40 TAC §750.201.....	2133	22 TAC §139.35.....	2158
40 TAC §§750.231, 750.233, 750.235, 750.237, 750.239, 750.241, 750.243, 750.245.....	2133	TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	
40 TAC §750.301.....	2134	RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT	
40 TAC §750.331, §750.333.....	2134	22 TAC §153.21.....	2158
40 TAC §§750.351, 750.353, 750.355.....	2135	TEXAS OPTOMETRY BOARD	
40 TAC §750.371, §750.373.....	2136	PRACTICE AND PROCEDURE	
40 TAC §750.401, §750.403.....	2136	22 TAC §277.2, §277.6.....	2159
40 TAC §§750.451, 750.453, 750.455.....	2136	POLYGRAPH EXAMINERS BOARD	
40 TAC §750.501.....	2137	POLYGRAPH EXAMINER INTERNSHIP	

22 TAC §391.3.....	2159
--------------------	------

STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

22 TAC §741.1.....	2163
22 TAC §741.1.....	2163
22 TAC §§741.11 - 741.15.....	2163
22 TAC §§741.11 - 741.15.....	2164
22 TAC §§741.31 - 741.33	2164
22 TAC §§741.31 - 741.33	2164
22 TAC §741.41.....	2165
22 TAC §§741.41 - 741.45	2165
22 TAC §§741.61 - 741.66	2167
22 TAC §§741.61 - 741.65	2167
22 TAC §§741.81 - 741.86	2172
22 TAC §§741.81 - 741.85	2172
22 TAC §741.91.....	2176
22 TAC §741.91.....	2177
22 TAC §§741.101 - 741.103	2177
22 TAC §§741.101 - 741.103	2177
22 TAC §741.111, §741.112.....	2178
22 TAC §741.111, §741.112.....	2178
22 TAC §741.121.....	2178
22 TAC §741.121.....	2179
22 TAC §741.141, §741.142.....	2179
22 TAC §741.141.....	2179
22 TAC §§741.161 - 741.165	2180
22 TAC §§741.161 - 741.165	2180
22 TAC §741.181, §741.182.....	2182
22 TAC §741.181, §741.182.....	2182
22 TAC §§741.191 - 741.195	2183
22 TAC §§741.191 - 741.201	2183

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE

28 TAC §5.4606.....	2183
---------------------	------

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PERMITS BY RULE

30 TAC §106.534.....	2185
----------------------	------

TEXAS DEPARTMENT OF PUBLIC SAFETY

DRIVER LICENSE RULES

37 TAC §15.24.....	2188
--------------------	------

BREATH ALCOHOL TESTING REGULATIONS

37 TAC §§19.1 - 19.7	2189
37 TAC §§19.1 - 19.7	2189
37 TAC §19.8.....	2194
37 TAC §§19.21 - 19.29	2194

RULE REVIEW

Proposed Rule Review

Railroad Commission of Texas	2205
------------------------------------	------

TABLES AND GRAPHICS

.....	2207
-------	------

IN ADDITION

Office of the Attorney General

Notice that Texas Family Code §234.008(d) is Null and Void	2291
--	------

Comptroller of Public Accounts

Notice of Award.....	2291
----------------------	------

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....	2291
------------------------------	------

Texas Commission on Environmental Quality

Enforcement Orders	2291
Enforcement Orders	2296
Notice of District Petition	2300
Notice of Meeting on April 27, 2006, in Rogers, Bell County, Texas Concerning the Mineral Wool Insulation Manufacturing Company (Site).....	2301
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	2302
Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions	2303
Notice of Public Hearings on Proposed Revisions to Chapters 101 and 122, to the State Implementation Plan, and to the Texas State Plan for Designated Facilities and Pollutants	2306
Notice of Water Quality Applications.....	2307
Notice of Water Quality Applications.....	2308
Notice of Water Rights Application.....	2309
Notice of Water Rights Application.....	2309
Proposal for Decision.....	2310
Proposed Enforcement Orders	2310

Department of Family and Protective Services

Notice of Public Hearing - Minimum Standards for Residential Child-Care Operations and Child-Placing Agencies.....	2312
--	------

General Land Office

Notice of Award for Consulting Services - Border Energy Forum 2313

Department of State Health Services

Licensing Actions for Radioactive Materials2313

Texas Department of Insurance

Third Party Administrator Applications2319

Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing2319

Texas Lottery Commission

Instant Game Number 650 "Casino Cash"2319

Instant Game Number 673 "Joker's Wild"2324

Texas Parks and Wildlife Department

Notice of Opportunity for Public Hearing and Public Comment ..2328

Texas Board of Professional Engineers

Record Drawing Policy Advisory Initial Notice for Stakeholders 2328

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority.....2329

Notice of Application for Service Area Exception in Hansford County, Texas2329

Notice of Application for Service Area Exception in Wheeler County, Texas2329

Notice of Application for Service Provider Certificate of Operating Authority2329

Notice of Petition for Waiver of Denial of Request for Number Block2330

Notice of Petition for Waiver of Denial of Request for NXX Code 2330

Public Notice of Workshop on the Development of the Decommissioning Annual Report Form and Request for Comments2330

Texas A&M University System, Board of Regents

Request for Proposal2331

Texas Department of Transportation

Notice of Request for Proposal2331

University of Houston System

Consultant Contract Award Notice2332

The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services2332

Notice of Entering into a Major Consulting Services Contract2332

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 28, 2006

Appointed to the Hidalgo County Regional Mobility Authority, pursuant to Transportation Code, §370.251, for a term to expire February 1, 2008, Dennis Burleson of Mission.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, E. G. Rod Pittman, Texas Water Development Board.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Joseph B. Fitzsimons, Texas Parks and Wildlife Commission.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Kathleen Hartnett White, Texas Commission on Environmental Quality.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Lori J. Ryerkerk of Beaumont.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Jeff Taylor of Houston.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Jerry Lynn Clark of Buna.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Richard Chalkley Bartlett of Carrollton.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, David K. Langford of Comfort.

Appointed to the Environmental Flows Advisory Committee for a term at the pleasure of the Governor, Ben F. Vaughan of San Antonio.

Designating E. G. Rod Pittman of Lufkin as Chair of the Environmental Flows Advisory Committee, pursuant to Executive Order RP50, for a term at the pleasure of the Governor.

Appointments for March 6, 2006

Appointed to the Veterans' Land Board for a term to expire December 29, 2008, Alan Johnson of Harlingen (replacing Mike Ussery who is deceased).

Appointments for March 7, 2006

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2009, Dionicio Vidal (Sonny) Flores of Houston (replacing Pat Gordon, El Paso, Texas who resigned).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2007, James H. Lee of Houston (replacing James Fonteno, Jr. of Houston who resigned).

Rick Perry, Governor

TRD-200601505



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0444-GA

Requestor:

Mr. Carlos A. Pereda, Jr.
Maverick County Auditor
370 North Monroe Street, Suite 1
Eagle Pass, Texas 78852

Requestor:

The Honorable J. Steven Houston
Brewster County Attorney
107 West Avenue E, #7
Alpine, Texas 79830

Re: Distribution of federal grant funds to sheriffs under Operation Linebacker (RQ-0444-GA)

Briefs requested by March 20, 2006

RQ-0446-GA

Requestor:

Mr. Raymund A. Paredes
Commissioner of Higher Education
Texas Higher Education Coordinating Board
Post Office Box 12788
Austin, Texas 78711

Re: Annexation of territory by Coastal Bend College (RQ-0446-GA)

Briefs requested by March 26, 2006

RQ-0447-GA

Requestor:

The Honorable Anna Mowery
Chair, Committee on Land and Resource Management
Texas House of Representatives
Post Office Box 2910

Austin, Texas 78768-2910

Re: Meaning of the term "service plan" under sections 43.056 and 43.141, Local Government Code, for purposes of a petition to disannex submitted by the voters of an annexed area of a municipality (RQ-0447-GA)

Briefs requested by March 26, 2006

RQ-0448-GA

Requestor:

The Honorable Geraldine ("Tincy") Miller
Chair, State Board of Education
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Discretion available to the State Board of Education in adopting the accounting method to be used in determining the market value of the Permanent School Fund (RQ-0448-GA)

Briefs requested by March 30, 2006

RQ-0449-GA

Requestor:

The Honorable Joel Littlefield
Hunt County Attorney
Post Office Box 1097
Greenville, Texas 75403-1097

Re: Whether a county clerk must accept for filing and recording a common-law copyright (RQ-0449-GA)

Briefs requested by March 30, 2006

RQ-0450-GA

Requestor:

The Honorable Eddie Lucio, Jr.
Chair, Committee on International Relations and Trade
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Whether the Texas Lottery Commission may issue a group license under the Bingo Enabling Act, chapter 2001, Texas Occupation Code (RQ-0450-GA)

Briefs requested by March 30, 2006

RQ-0451-GA

Requestor:

The Honorable Beverly Woolley
Chair, Committee on Calendars
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Requestor:

The Honorable John Smithee
Chair, Committee on Insurance
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Conflict of interest disclosure requirements for local government officers and persons who contract with local governmental entities (RQ-0451-GA)

Briefs requested by March 31, 2006

RQ-0452-GA

Requestor:

The Honorable Anna Mowery
Chair, Committee on Land and Resource Management

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a city council member who announces his candidacy for another elective position may continue to serve as a council member until his successor is qualified (RQ-0452-GA)

Briefs requested by March 31, 2006

RQ-0453-GA

Requestor:

Colonel Thomas A. Davis, Jr., Director
Texas Department of Public Safety
Post Office Box 4087
Austin, Texas 78773-0001

Re: Whether a person who was convicted as a sex offender in another state prior to September 1, 1995, and was still under active supervision in that state on September 1, 1997, is required to register as a sex offender in Texas (RQ-0453-GA)

Briefs requested by April 2, 2006

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200601503
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: March 8, 2006

◆ ◆ ◆

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-532. The Texas Ethics Commission has been asked to consider whether a former state employee who, while an employee for a state agency testified as an expert witness on the state agency's rules in a lawsuit in which the state was not a litigant, may now represent a litigant in that lawsuit.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

- (1) Chapter 572, Government Code;
- (2) Chapter 302, Government Code;
- (3) Chapter 303, Government Code;
- (4) Chapter 305, Government Code;
- (5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200601511

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: March 8, 2006

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.5

The Texas Historical Commission proposes amendments to §12.5, to decide on important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five year period the rule is in effect, the public benefit anticipated as a result of administering the rule will be that more grants will be able to be funded.

There will be no effect on small business. There is no anticipated economic cost to the persons who are required to comply with the rule as proposed.

Written comments on the amended rule proposal may be submitted to Kimberly Gamble, Texas Register Liaison, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. All comments will be accepted for 30 days after the date of publication in the *Texas Register*.

These amendments are proposed under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.0081 is affected by the proposed amendments.

§12.5. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Texas Historic Courthouse Preservation Program. Means the grant or loan program created by Texas Government Code, Chapter 442, §442.0081-83 ~~[the enactment of HB 1341 by the 76th Texas Legislature (1999)]~~.

(2) - (11) (No change.)

(12) Match requirement. Means the percentage of the total ~~[grant]~~ project cost that must be provided by a county ~~[in the form of~~

a prior capital expenditures match, prior in kind match, current cash match, current in kind match, or planning match].

~~[(13) Prior capital expenditures match. Means monies previously spent by a county for past courthouse preservation projects in the 30 month period prior to the date of application, excluding monies required to match a previous Texas Historical Commission.]~~

~~[(14) Prior in-kind match. Means materials donated to a county for past courthouse preservation projects in the 30 month period prior to the date of application.]~~

(13) ~~[(15)]~~ Current cash match. Means monies to be paid by a county as part of the preservation project described in a current request for grant or loan funding.

(14) ~~[(16)]~~ Current in-kind match. Materials and labor to be donated as part of the preservation project described in a current request for grant or loan funding.

(15) ~~[(17)]~~ Planning match. Means county monies spent on an approved master preservation plan or approved construction plans and specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601417

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 463-8817



13 TAC §12.7

The Texas Historical Commission proposes amendments to §12.7, to decide on important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five year period the rule is in effect, the public benefit anticipated as a result of administering the rule will be that more grants will be able to be funded.

There will be no effect on small business. There is no anticipated economic cost to the persons who are required to comply with the rule as proposed.

Written comments on the amended rule proposal may be submitted to Kimberly Gamble, Texas Register Liaison, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. All comments will be accepted for 30 days after the publication in the *Texas Register*.

These amendments are proposed under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.0081 is affected by the proposed amendments.

§12.7. *Grant or Loan Program.*

- (a) (No change.)
- (b) Master plan requirement. In order to be eligible for funding, a county must have ~~[completed]~~ a current master preservation plan approved by ~~;~~ completed or updated in the 30-month period prior to the date of application; and received approval of the plan from the commission. The Commission may require an outdated master plan be updated prior to the date of application or a before a grant or loan is approved.
- (c) (No change.)
- (d) Match for grant or loan assistance. Applicants eligible to receive grant or loan assistance must provide a minimum of 15% of the total project cost or other match requirements as determined by the commission. Credit toward match may be given for county's prior planning costs, such as those involved with preparing an approved master plan or approved construction plans and specifications for the project. Not less than one half of the match must be derived from current cash match and/or planning match. ~~;~~ of which not more than one half of the match may be derived from prior capital expenditures, prior in-kind match, and current in-kind match, and not less than one half of the match must be derived from current cash match and/or planning match. Prior capital expenditure and prior in-kind matches constitute credit for commission approved capital and planning expenditures during the 30-month period prior to the date of application.
- (e) Allowable use of grant or loan monies.
 - (1) A county that receives money under the courthouse program must use the money only for preservation, reconstruction, rehabilitation, ~~[and]~~ restoration or other expenses that the commission determines eligible.
 - (2) (No change.)
 - (3) Individual grants or loans may not exceed \$6 ~~(six)~~ [\$4] million and the cumulative total may not exceed \$6 million to any one county.
 - (4) The commission may grant a different ~~[less than the]~~ amount than requested in a courthouse grant application.
- (f) (No change.)
- (g) Advisory Committee.
 - (1) The Commission may appoint Advisory Committees or other working groups [The purpose of the advisory committee is] to advise the commission on matters related to the Texas Historic Courthouse Preservation Program including courthouse maintenance.

(2) The Commission may consider the following when selecting members of an advisory committee or working group [The advisory committee shall consist of]:

- (A) geographic diversity; [members from the different geographical areas of the state];
 - (B) population; [an equal number of members from counties with a population of:]
 - ~~[(i) 24,999 or less;]~~
 - ~~[(ii) 25,000 to 75,000; and]~~
 - ~~[(iii) 75,001 or more; and]~~
 - (C) area of expertise; and/or [at least the following members:]
 - ~~[(i) one or more elected county officials;]~~
 - ~~[(ii) one or more members of historical organizations or persons with knowledge of and experience in preservation who are not elected county officials; and]~~
 - ~~[(iii) one or more members of the general public who do not meet the requirements of (C)(i) or (C)(ii) of this subchapter.]~~
 - (D) representation of the public interest.
- ~~[(3) The advisory committee shall meet annually, or as directed by the commission, to discuss issues related to paragraph (g)(1) of this section and provide a report in written form or in other formats as determined by the commission, at a regularly scheduled commission meeting, or at times as otherwise determined by the agency.]~~
- ~~[(4) The advisory committee shall be abolished on August 31, 2003, unless specifically continued by an affirmative vote of the commission.]~~
- (h) - (i) (No change.)
- (j) Grants for Construction Plans and Specifications:
- (1) (No change.)

(2) A county receiving a grant for completing plans and specifications must apply for a construction grant from this program at the next grant program funding opportunity following THC acceptance of the complete plans and specifications. The county [county's grant application] must provide at least an equal level of commitment [preservation commitments] to program components as provided in their previous funding applications. If a construction grant is awarded, the county must go forward with construction of the courthouse project so funded. If a grant is not awarded, the county must continue to apply for construction grants and make a good-faith effort to receive the grant when subsequent opportunities arise.

(3) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601418

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 463-8817

◆ ◆ ◆

13 TAC §12.9

The Texas Historical Commission proposes amendments to §12.9, to decide on important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five year period the rule is in effect, the public benefit anticipated as a result of administering the rule will be that more grants will be able to be funded.

There will be no effect on small business. There is no anticipated economic cost to the persons who are required to comply with the rule as proposed.

Written comments on the amended rule proposal may be submitted to Kimberly Gamble, Texas Register Liaison, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. All comments will be accepted for 30 days after the publication in the *Texas Register*.

These amendments are proposed under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.0081 is affected by the proposed amendments.

§12.9. *Application Requirements and Considerations.*

(a) A county that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

(1) - (2) (No change.)

(3) a statement of the amount of money and [or] in-kind contributions that the county commits to contribute to the project;

(4) a statement of previous county monies spent on planning which [allowable money or in-kind contribution] the county may be allowed as credit toward [will use for] their match;

(5) (No change.)

(6) copies of any plans, including the required master preservation plan or construction plans and specifications, that the county may have for the project unless the commission already has these plans on file;

(7) - (10) (No change.)

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work.

(2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

(1) - (5) (No change.)

(6) the county agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;

(7) - (10) (No change.)

(11) if a county submits completed and Commission-approved construction [complete] plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) - (21) (No change.)

(d) - (e) (No change.)

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601419

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 463-8817

◆ ◆ ◆

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas proposes amendments to §§13.2 - 13.4, 13.25, 13.35, 13.36, 13.38, 13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.92 - 13.94, 13.102, 13.141, and 13.183, relating to Retroactivity; Definitions; CNG Report Forms; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; Removal from CNG Service; Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualifications as Self-Insured; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Other Fees for Employee Transfer; Franchise Tax Certification and Assumed Name Certificate; System Component Qualification; General; Location of Installations; Installation of Electrical Equipment; System Testing; and System Component Qualifications. The Commission also proposes the repeal of §13.80, relating to CNG Continuing

Education Requirements, and new §13.80, relating to Requests for CNG Classes.

The Commission proposes the amendments in part as a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005). HB 1162 amended Texas Natural Resources Code, §116.034 to provide that the Commission may adopt rules establishing training and seminar attendance requirements for persons required or who wish to be licensed or registered to perform compressed natural gas (CNG) activities, but is not required to do so. Additional proposed amendments to these rules are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The specific rule affected by HB 1162 is §13.80, relating to CNG Continuing Education Requirements, which the Commission proposes to repeal and replace with proposed new §13.80, Requests for CNG Classes. Current §13.80 provides for continuing education requirements for persons holding a CNG license and their representatives. In general, licensees and their representatives were to attend a continuing education class once every four years. Due to budget and staff limitations, the Commission has no CNG continuing education classes, and because as of January 2006 there are only 33 CNG licensees and about 85 CNG individual certificate holders, the Commission finds that its training and continuing education resources are more efficiently and effectively employed elsewhere.

The Commission offers training courses on CNG activities under the Commission's jurisdiction through the Alternative Fuels Research and Education Division (AFRED). Under the wording in proposed new §13.80, requests for Commission staff to conduct a CNG class should be submitted to AFRED, which may schedule and conduct the class at its discretion. The non-refundable fee is \$250 for a class where no overnight expenses are incurred by AFRED staff, or \$500 if overnight expenses are incurred. AFRED may waive the fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

The Commission proposes amendments to §13.70, relating to Examination Requirements and Renewals, to make the rule and procedures consistent with the same procedures for the Commission's liquefied petroleum gas (LP-gas) certification requirements. In addition, some of the proposed amendments clarify that AFRED is the Commission division that offers the examinations, as shown in subsection (a)(4). In proposed amendments to subsection (a)(5), AFRED will notify individuals of their examination results within 15 days, rather than 30 days of the date of the examination. The only change proposed to the Table in §13.70 is the correction of the annual renewal fee amount, which is \$25; the fee was changed in a previous rulemaking and the change make the table match the wording in subsection (d)(2). Other proposed amendments in §13.70 correct references to AFRED and to the License and Permit Section of the Gas Services Division.

The Commission proposes other amendments that are non-substantive and result in no changes to current requirements or procedures. In §13.2, the Commission proposes to delete a reference to the former LP-Gas Section. In §13.3, relating to Definitions, the Commission proposes a new definition for "AFRED." The Commission proposes to delete definitions for "auxiliary engine" and "filled by pressure" because those terms are not used in Chapter 13. The Commission proposes to add the definition of "Company representative"; the wording matches the definition of the same term in the liquefied natural gas (LNG) rules.

The Commission proposes to change the definition of "dispensing station" to "dispensing area or dispensing installation," which are the terms actually used in the chapter. The Commission proposes to delete the definition of "Division" because CNG activities are divided among the AFRED, Gas Services, and Safety Divisions; in each substantive rule that refers to "a division," the specific division is noted. The Commission proposes to add a definition of "pressure filled" to replace the definition for "filled by pressure," which the Commission proposes to delete. The remaining amendments proposed in this rule renumber the unchanged definitions as necessary.

Proposed amendments in §13.4, relating to CNG Report Forms, delete an outdated reference to a Commission section.

The Commission proposes amendments in §§13.25, 13.35, 13.36, 13.38, 13.61 - 13.63, 13.67 - 13.69, 13.75, 13.92 - 13.94, 13.102, 13.141, and 13.183 to correct citations to other rules, chapters, or agencies; correct the Commission division or office; make the rule wording consistent with the Commission's LP-gas or LNG rules; and update the Tables to the current formats used by the Commission in other rules. The Commission proposes minor changes in the table in §13.62, such as a revised title, correction of the name of the Texas Workforce Commission, deletion of some obsolete references, and the combination of the text in subsections (k) and (l) into a single subsection (k) and the deletion of subsection (l) to eliminate redundant wording. In §13.63, the Commission proposes to delete one table because it duplicates a table in §13.62 and is unnecessary; and to combine the text of subsections (g) and (h) into a single subsection (g) and delete subsection (h) to eliminate redundant wording. The Commission proposes changes in the tables in §§13.93, 13.94, and 13.102 to change the titles, make some minor formatting changes, and correct spelling.

In §13.73, relating to Other Fees for Employee Transfers, the Commission proposes to correct the title of the rule and to add a reference to AFRED and to delete the requirement that the CNG Form 1016A be received by the Commission within a specific time.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that for each year of the first five years the proposed amendments, repeal, and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments, repeal, and new section.

Mr. Kelly has also determined that for each year of the first five years the amendments, repeal, and new section are in effect the public benefit anticipated as a result of enforcing the amendments will be the better understanding of the rule requirements for the CNG industry and the general public. There is no anticipated economic cost to individuals or small businesses required to comply with the proposed amendments, repeal, or new section; a request for a CNG class, which may incur a \$250 or \$500 fee, is voluntary.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Mr. Kelly has determined that there is no adverse economic effect on small businesses or micro-businesses, because the amendments proposed in this rulemaking are non-substantive and do

not change any requirements for CNG licensees and their representatives, certificate holders, or ultimate consumers.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Thomas Petru at (512) 463-6930. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §§13.2 - 13.4

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.2. *Retroactivity.*

Unless otherwise stated, the regulations in this chapter ~~[for the compressed natural gas of the LP-Gas Section, Gas Services Division]~~ are not retroactive. Any installation of a CNG system shall meet the requirements ~~[of the rules and regulations]~~ of this chapter at the time of installation.

§13.3. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AFRED--Alternative Fuels Research and Education Division.

(2) [(1)] ANSI--American National Standards Institute.

(3) [(2)] Approved--Authorized by a ~~[the]~~ Division or the Commission.

(4) [(3)] ASME--American Society of Mechanical Engineers.

(5) [(4)] ASME Code--ASME Boiler and Pressure Vessel Code.

(6) [(5)] ASTM--American Standard Testing Material.

(7) [(6)] Automatic dispenser--A CNG dispenser which is operated by a member of the general public and which requires transaction authorization.

[(7) Auxiliary engine--An engine which is mounted on a vehicle but used for purposes other than propelling the vehicle.]

(8) - (15) (No change.)

(16) Company representative--An owner or employee of a licensee designated by that licensee to take any required examinations and to actively supervise CNG operations of the licensee.

(17) [(46)] Compressed natural gas--Natural gas which is a mixture of hydrocarbon gases and vapors consisting principally of methane (CH₄) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

(18) [(47)] Container--A pressure vessel cylinder or cylinders permanently manifolded together used to store CNG.

(19) [(48)] Cylinder service valve--A hand-wheel operated valve connected directly to a CNG cylinder.

(20) [(49)] Dispensing area or dispensing installation [station]--A CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.

[(20) Division--The Director of the Gas Services Division of the Railroad Commission of Texas or the director's delegate.]

(21) DOT--United States Department of Transportation.

[(22) Filled by pressure--A method of transferring CNG into cylinders by using pressure differential.]

(22) [(23)] Flexible metal hose--Metal hose made from continuous tubing that is corrugated for flexibility and, if used for pressurized applications, has an external wire braid.

(23) [(24)] Fuel supply cylinder--A cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.

(24) [(25)] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of a CNG installation.

(25) [(26)] Location--A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG activities, but where the activities of the site alone do not qualify the site as an outlet.

(26) [(27)] Manifold--The assembly of piping and fittings used to connect cylinders.

(27) [(28)] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county and primarily used in the conveyance of the general public.

(28) [(29)] Metallic hose--Hose in which the strength of the hose depends primarily on the strength of metallic parts, including liners or covers.

(29) [(30)] Mobile fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than motor fuel.

(30) [(31)] Mobile fuel system--A CNG system which supplies natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(31) [(32)] Motor fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply to an engine used to propel the vehicle.

(32) [(33)] Motor fuel system--A CNG system excluding the container which supplies CNG to an engine used to propel the vehicle.

(33) [(34)] Motor vehicle--A self-propelled vehicle licensed for highway use or used on a public highway.

(34) [(35)] Outlet--A site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

(35) [(36)] Person--An individual, sole proprietor, partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

(36) [(37)] Point of transfer--The point where the fueling connection is made.

(37) Pressure-filled--A method of transferring CNG into cylinders by using pressure differential.

(38) - (49) (No change.)

§13.4. CNG Forms.

Under the provisions of the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has designated [adopted] the following forms for use [by the LP Gas Section, Gas Services Division]:

(1) - (30) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601164

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.25, 13.35, 13.36, 13.38

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.25. Filings Required for Stationary CNG Installations.

(a) - (b) (No change.)

(c) The Commission shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or may request a hearing in accordance with the general rules of practice and procedure

of the Railroad Commission of Texas in [16 TAC] Chapter 1 of this title (relating to Practice and Procedure).

(d) - (k) (No change.)

(l) Appurtenances and equipment.

(1) - (3) (No change.)

(4) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Commission on Environmental Quality or its successor agencies [Natural Resource Conservation Commission].

§13.35. Application for an Exception to a Safety Rule.

(a) A person may apply for an exception to the provisions of this chapter by filing CNG Form 1025 along with supporting documentation and a \$50 filing fee with the Safety Division (Division) [~~Commission~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and any information which may assist the Division [~~Commission~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of CNG Form 1025 by certified mail, return receipt requested, to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form is filed with or sent to the Division [~~Commission~~]. The applicant shall include a notice to the affected entities that any objection shall be filed with the Division [~~Commission~~] within 18 calendar days of the date of postmark. The applicant shall file all return receipts with the Division [~~Commission~~] as proof of notice.

(2) - (3) (No change.)

(4) The Division [~~Commission~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed with the Division [~~at the Commission~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. The Commission may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) The Division [~~Commission~~] shall review the application within 21 business days of receipt of the application. If the Division [~~Commission~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the director of the [Gas Services] Division or the director's delegate may administratively grant the exception if the director determines that the installation, as proposed, does not adversely affect the health or safety of the public. The Division [~~Commission~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. The Division [~~Commission~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the director of the [Gas Services] Division or the director's delegate denies the exception, the Division [~~Commission~~] shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to

correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when the Division [~~Commission~~] receives an objection as set out in subsection (d) from any affected entity, or when the applicant requests one following an administrative denial. The Division [~~Commission~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the Regulations for Compressed Natural Gas.

(g) - (i) (No change.)

(j) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by the Division [~~Commission~~] of an incomplete request. The applicant may resubmit an exception request.

§13.36. Report of CNG Incident/Accident.

(a) In case of an incident involving single release of compressed natural gas (CNG) during or following CNG transfer or during container transportation, or an accident at any location where CNG is the cause or is suspected to be the cause, the licensee owning, operating, or servicing the equipment or the installation shall notify the Safety Division [~~LP-Gas Section~~]. This notification shall be by telephone as soon as possible after the licensee has knowledge of the incident or accident. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. However, any loss occurring as a result of a pullaway shall be reported.

(b) Information which shall be reported to the Safety Division [~~LP-Gas Section~~] includes: date and time of the incident or accident; type of structure or equipment involved; resident's or operator's name; physical location; number of injuries and/or fatalities; whether fire, explosion, or gas leak has occurred; whether gas is leaking; and whether immediate assistance from the division is requested. Any individual reporting shall leave his or her name, and telephone number where he or she can be reached for further information.

(c) Any transport unit required to be registered with the Gas Services Division [~~Commission~~] in accordance with §13.69 of this title (relating to Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of CNG resulting from an accident shall be reported to the Safety Division [~~Commission~~] in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment shall be reported to the Safety Division [~~Commission~~] in accordance with this section regardless of accident location.

(d) Following the initial telephone report, a CNG Form 1020, Report of CNG Incident/Accident, shall be submitted to the Safety Division [~~LP-Gas Section~~]. The report shall be postmarked within 14 calendar days of the date of initial notification to the division.

§13.38. Removal from CNG Service.

(a) If the Safety Division (the Division) [~~commission or division director~~] determines that any compressed natural gas (CNG) cylinder constitutes an immediate danger to the public health, safety, and welfare, the Division [~~it~~] shall require the immediate removal of the

CNG by a properly licensed company to the extent necessary to eliminate the danger. If the Division [~~commission or division director~~] determines that any CNG appliance, equipment, or system constitutes an immediate danger to the public health, safety, and welfare, the Division [~~it~~] shall require the immediate disconnection by a properly licensed company of such appliance, equipment, or system from the CNG cylinder it services.

(b) If the affected entity disagrees with the placement of a warning tag, or with the Division's [~~commission or division director's~~] findings in subsection (a) of this section, the entity [~~he~~] may request an investigation into the matter. The Division [~~division director~~] shall notify such entity of its [~~his~~] finding. If the entity disagrees, the entity may request or the Division [~~commission~~] on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601163

Mary Ross McDonald
Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.80

The Commission proposes the amendments and new section under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.61. Licenses, Related Fees, and Licensing Requirements.

(a) A prospective licensee may apply to the License and Permit Section of the Gas Services Division (the Section) [~~Commission~~] for one or more licenses specified in subsection (b)(1) - (6) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of licensing or renewal. A person shall not engage in CNG activities unless that person has obtained a license as specified in this section. If a license expires or lapses, the person shall immediately cease CNG operations.

(b) - (e) (No change.)

(f) Licensees shall maintain a copy of the current Regulations for Compressed Natural Gas [~~published by the Commission~~] and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during

business hours. ~~[Failure to maintain the required copies may result in enforcement action such as penalties or suspension of licenses.]~~

(g) - (h) (No change.)

(i) For license renewals, the Section ~~[Commission]~~ shall notify the licensee in writing at the address on file with the Section ~~[Commission]~~ of the impending license expiration at least 30 calendar days before the date the license is scheduled to expire. Renewals shall be submitted to the Section ~~[Commission]~~ along with the license renewal fee specified in subsection (b) of this section on or before the last day of the month in which the license expires in order for the licensee to continue CNG activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any CNG activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, the Section ~~[Commission]~~ shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section ~~[Commission]~~ shall renew the license, and the person may resume CNG activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, the Section ~~[Commission]~~ shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section ~~[Commission]~~ shall renew the license, and the person may resume CNG activities.

(3) (No change.)

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application, may obtain a new license without reexamination. The person shall pay to the Section ~~[Commission]~~ a fee that is equal to two times the renewal fee required by subsection (b) of this section.

(A) - (B) (No change.)

(j) Applicants for license or license renewal shall file with the Section ~~[Commission]~~ CNG Form 1001 designating a company representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising CNG operations of the licensee. A licensee may have more than one company representative.

(1) An applicant for license shall not engage in CNG activities governed by the Texas Natural Resources Code, Chapter 116, and the Regulations for Compressed Natural Gas, until its company representative has successfully completed the management examination administered by the Alternative Fuels Research and Education Division ~~[Commission]~~.

(2) The licensee shall notify the Section ~~[Commission]~~ in writing upon termination of its company representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001.

(3) The licensee shall cease operations if, at the termination of its company representative, there is no other qualified ~~[certified]~~ company representative of the licensee who has complied with the Commission's requirements ~~[acknowledged and recorded by the Commission at its Austin office]~~. The licensee shall not resume CNG

activities ~~[operation]~~ until such time as it has a properly qualified company representative.

(k) (No change.)

§13.62. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the minimum amounts of insurance required of those persons or businesses licensed by the License and Permit Section of the Gas Services Division ~~(the Section) [commission]~~ to do business in Texas. The minimum amounts of insurance and other insurance requirements are specified in Table 1 in subsection (i)(5) ~~[(Table 4)]~~ of this section.

(b) The Section ~~[commission]~~ shall not issue a license authorizing activities under §13.61 of this title (relating to Licensing), or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state, or provides, on approval of the Section ~~[commission]~~, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of the Texas Insurance Code, Article 1.14-2, and rules adopted by the Texas Department of Insurance under that article.

(c) (No change.)

(d) Except as provided in the column relating to Statements in Lieu of Insurance Certificates in Table 1 in subsection (i)(5) ~~[(Table 4)]~~ of this section, and paragraphs (1) - (3) of this subsection, the types and amounts of insurance specified in subsection (i)(5) ~~[(Table 4)]~~ of this section are required while engaging in any of the activities set forth in this section or any activity incidental thereto.

(1) A Category 3 licensee or applicant for license or ultimate consumer that does not operate or contemplate the operation of a CNG transport and does not transport or contemplate the delivery of CNG cylinders by vehicle in any manner may file a CNG Form 1997B in lieu of filing a certificate of motor vehicle bodily injury and property damage liability insurance. The licensee or applicant for a license must file the required insurance certificate with the Section ~~[commission]~~ before operating a motor vehicle equipped with a CNG cargo container or transporting CNG by vehicle in any manner.

(2) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may file a CNG Form 1998B in lieu of filing a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the Section ~~[commission]~~ before engaging in any operations that require general liability insurance.

(3) A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in CNG related activities in Texas may file a CNG Form 1996B in lieu of filing a certificate or workers' compensation insurance, including employer's liability insurance. The licensee or applicant for a license must file the required insurance certificate with the Section ~~[commission]~~ before hiring any person as an employee engaged in CNG related work.

(e) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the Section ~~[commission]~~ shall be filed with the Section ~~[commission]~~ before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the Section ~~[commission]~~ in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the Section ~~[commission]~~, but which complies with the substantive requirements of this section and with the rules adopted under this section, may

be considered by the Section ~~[eommission]~~ to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the Section ~~[eommission]~~ an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(f) (No change.)

(g) Each certificate of insurance filed with the Section ~~[eommission]~~ must have one of the endorsements specified in subsection (i)(5) ~~[(Table 4)]~~ of this section attached to the policy, and may not be cancelled without cancellation of the policy to which it is attached.

(h) Each endorsement issued and attached to a certificate of insurance noted in subsection (g) of this section requires the insurance carrier, noted as company on the certificate of insurance to give the Section ~~[eommission]~~ 30 days' written notice before the insurance cancellation. The 30 days' notice commences to run from the date the notice is actually received by the Section ~~[division]~~.

(i) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) receipt by the Section ~~[eommission]~~ of written notice stating the insurer's intent to cancel a policy of insurance and giving a minimum of 30 days' notice before the insurance cancellation;

(2) receipt by the Section ~~[eommission]~~ of an acceptable replacement insurance certificate;

(3) (No change.)

(4) receipt by the Section ~~[eommission]~~ of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the Section ~~[eommission]~~; or

(5) the Railroad Commission of Texas' cancellation by order or after hearing.

Figure: 16 TAC §13.62(i)(5)

(j) (No change.)

(k) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance or workers' compensation coverage by submitting evidence of self-insurance that complies with the requirements of §13.63 of this title (relating to Qualification as Self-Insured).

~~[(l) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance by submitting evidence of self-insurance that complies with the requirements of §§13.63 of this title (relating to Qualification as Self-Insured).]~~

§13.63. Qualification as Self-Insured.

(a) (No change.)

(b) Applicant guidelines. In addition to filing a CNG Form 1027, Application for Qualification as Self-Insurer, an applicant applying for self-insurer status covering general liability, including premises and operations coverage, shall submit materials that will allow the commission to determine whether:

(1) - (2) (No change.)

(3) the applicant presents evidence that it meets the requirements for motor carrier self-insurance promulgated by the Texas Department of Transportation [evidence of motor vehicle self-insurability accepted by the Transportation Division of the Railroad Commission of Texas may be submitted to the division for consideration in determining self-insurability].

(c) - (f) (No change.)

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for general liability and/or motor vehicle liability insurance or workers' compensation coverage of §13.62 of this title (relating to Insurance Requirements) if [by submitting evidence of self-insurance] permitted by the Texas ~~[state]~~ Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A, ~~[Texas Civil Statutes, Article 8308-1.01, et seq.; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h]; and the Texas Natural Resources Code, §116.036, by submitting a CNG Form 1995 to the commission.~~

~~[(h) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for general liability and/or motor vehicle liability insurance in §13.62 of this title (relating to Insurance Requirements) by submitting a CNG Form 1995 as evidence of self-insurance coverage if permitted by the state Workers' Compensation Act, Texas Civil Statutes, Article 8308-1.01, et seq.; Texas Civil Statutes, Article 8309b, 8309d, 8309g, 8309g-1, and 8309h; and the Texas Natural Resources Code, §116.036.]~~
~~[Figure: 16 TAC §13.63(h)]~~

§13.67. Changes in Ownership and/or Form of Dealership.

(a) Transfer of dealership outlet or location by sale, lease, or gift.

(1) (No change.)

(2) Notice. After the transfer of any dealership outlet or location, the new operator/owner or the authorized representative thereof, shall notify the License and Permit Section of the Gas Services Division (the Section) ~~[division]~~ of the completed transfer of such dealership by certified mail immediately upon the completion of said transfer, and file with the Section ~~[division]~~ all forms of application for licensing or registration required by this subchapter.

(b) Other changes in ownership.

(1) (No change.)

(2) Notice. The successor in interest shall notify the Section ~~[division]~~ by certified mail of the death of a sole proprietorship or partner, the dissolution of a corporation or partnership, any change in partnership members, or other changes in ownership not specifically provided for elsewhere in this section.

(3) - (4) (No change.)

(c) Changes in dealership business form.

(1) (No change.)

(2) Notice. An authorized representative of the original entity or of the new entity shall notify the Section ~~[division]~~ by certified mail of an accomplished change in business form immediately upon the completion of such conversion, and shall cause to be filed with the Section ~~[division]~~ all forms of applications for licensing or registration required by this subchapter.

§13.68. Dealership Name Change.

(a) Duty to report. A licensee shall file the following forms evidencing any change in the licensee's name with the License and

Permit Section of the Gas Services Division (the Section) ~~[division]~~ prior to engaging in operations that require a CNG license under a new business form:

(1) - (2) (No change.)

(3) any other forms required by the Section ~~[division]~~.

(b) Duty to register. A licensee operating under a changed name shall cause the reregistration of any CNG transport unit from the old name to the changed name of the license by filing an amended CNG Form 1007, Compressed Natural Gas Transport Registration, with the Section ~~[division]~~ prior to the use of any such unit in the transport or delivery of CNG in the State of Texas.

§13.69. Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority.

(a) A person who operates a transport equipped with CNG cargo tanks or any cylinder delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with the License and Permit Section of the Gas Services Division (the Section) ~~[Commission]~~ in the name or names under which the operator conducts business in Texas prior to the transport or unit being used in CNG service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to the Section ~~[Commission]~~ the \$270 registration fee for each bobtail truck, semitrailer, cylinder delivery unit, or other motor vehicle equipped with CNG cargo tanks; and

(B) (No change.)

(2) To register a specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to the Section ~~[Commission]~~ the \$270 registration fee;

(B) - (C) (No change.)

(3) (No change.)

(b) The Section ~~[Commission]~~ may also request that an operator registering or transferring any unit to file a copy of the Manufacturer's Data Report.

(c) When all registration or transfer requirements have been met, the Section ~~[Commission]~~ shall issue CNG Form 1004 or letter of authority which shall be properly affixed as instructed on the decal or letter or maintained on the bobtail or transport trailer. CNG Form 1004 or letter of authority shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of CNG and to fill the transport containers.

(1) A person shall not operate a CNG transport unit or cylinder delivery unit or introduce CNG into a transport container in Texas unless the CNG Form 1004 or letter of authority has been properly affixed as instructed on the decal or the letter or maintained on the bobtail or transport trailer or unless its operation has been specifically approved by the Section ~~[Commission]~~.

(2) - (3) (No change.)

(4) The Section ~~[Commission]~~ shall not issue a CNG Form 1004 or letter of authority if the Section ~~[Commission]~~ or a Category 1 or 4 licensee determines that the transport is unsafe for CNG service.

(5) If a CNG Form 1004 decal or letter of authority on a unit currently registered with the Section ~~[Commission]~~ is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement

by filing CNG Form 1018B and a \$50 replacement fee with the Section ~~[Commission]~~.

§13.70. Examination Requirements and Renewals.

(a) Examination general provisions.

(1) No individual may work or be employed in any capacity which requires contact with CNG or CNG systems until that individual has submitted to and successfully completed a Commission examination which measures the competency of that individual to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the regulations for compressed natural gas related to the type of CNG work anticipated. Table 1 of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision.

Figure: 16 TAC §13.70(a)(1)

(A) - (C) (No change.)

(2) Each individual who performs CNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such CNG activities shall be properly trained by a competent person in the safe performance of such CNG activities. [Any employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision not required to submit to examination under this section shall be properly supervised and trained in the installation, maintenance, and storage of CNG and CNG systems, and in the operation of equipment during the filling of and dispensing from storage containers. Such training shall also include the protection of containers and equipment against mechanical injury or tampering by unauthorized persons.]

(3) Each person wishing to submit to examination by the commission shall file a CNG Form 1016 with AFRED [the commission prior to examination].

(4) An individual who has filed CNG Form 1016 and the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, [Austin office] between the hours of 8:00 a.m. and 12:00 noon [2:00 p.m.], Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center. Dates and locations of available Commission CNG examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion. [Applicants who wish to take the rules examination at sites other than the Austin office shall submit CNG Form 1016 and the applicable fee to the Commission's Austin office at least three business days prior to the examination date in order to receive an admittance letter from the Commission.]

The admittance letter shall be required at all exam sites other than the Austin office.]

(5) Within ~~15~~ [30] days of the date an individual takes an examination, AFRED [the Commission] shall notify the individual of the results of the examination.

(A) If the examination is graded or reviewed by a testing service, AFRED [the Commission] shall notify the individual of the examination results within 14 days of the date AFRED [the Commission] receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED [the Commission] shall notify the individual of the reason for the delay before the 90th day. AFRED [The Commission] may require a testing service to notify an individual of the individual's examination results.

(B) (No change.)

(C) Failure of any examination shall immediately disqualify the individual from performing any CNG related activities covered by the examination which is failed. Any individual who fails an examination administered by the Commission at the Austin location only may retake the same examination only one additional time during a business day. Any subsequent examinations shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee. [Any person who fails an examination administered by the Commission may not re-take that examination for a period of at least 24 hours.] If requested [in writing] by an individual who failed the examination, AFRED [the Commission] shall furnish the individual with an analysis of the individual's performance on the examination.

(b) General installers and repairmen exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B air conditioning and refrigeration contractors license issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category 2 and 3 service and installation employee examination requirements by submitting to the License and Permit Section of the Gas Services Division [Commission] the following information:

(A) - (B) (No change.)

(C) any information the Section [Commission] may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by the Section [Commission].

(3) - (4) (No change.)

(5) In order to maintain an exemption, each individual issued an examination exemption card shall pay a \$20 annual renewal fee to the Section [Commission] on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease performing all CNG related activities granted by this exemption until that individual renews the exemption. To renew a lapsed exemption, the individual shall pay the \$20 annual renewal fee plus a \$20 late-filing fee. Failure to do so shall result in the expiration of the examination exemption. If the individual's examination exemption has been expired for one year or longer, the individual shall complete all requirements necessary to apply for a new exemption.

(6) Any individual who is issued this exemption agrees to comply with the current edition of the regulations for compressed natural gas. In the event the exempt individual surrenders, fails to renew,

or has the license revoked either by the Texas State Board of Plumbing Examiners or Department of Licensing and Regulation, that individual shall immediately cease performing any CNG activity granted by this section. The examination exemption card shall be returned immediately to the Section [Commission] and all rights and privileges surrendered.

(c) Trainees.

(1) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination subject to the following conditions.

(A) (No change.)

(B) The licensee or ultimate consumer shall ensure that CNG Form 1016 is on file with AFRED [the Commission] for each trainee at the time that trainee begins supervised CNG activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.

(2) - (3) (No change.)

(d) Renewal of certified status.

(1) AFRED [The Commission] shall notify licensees of any employees' pending renewals, or shall notify the individual if not employed by a licensee, in writing, at the address on file with AFRED [the Commission] no later than March 15 of a year for the May 31 renewal date of that year.

(2) In order to maintain active status, a certificate holder shall pay the \$25 annual certificate renewal fee to AFRED [the Commission] on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(3) (No change.)

(4) Any lapsed renewals submitted after May 31st of each year shall include a \$20 late filing fee in addition to the renewal fee, proof of successful completion of the examination required for certification, and be received in AFRED's [the Commission's] Austin office no later than close of business on August 31 or, if August 31 falls on a weekend or state holiday, close of business on the last business day before August 31 of each year. Upon receipt of the renewal fee and late filing penalty, AFRED [the Commission] shall verify that the individual's certification has not been suspended, revoked, or expired for one year or longer. After verification, AFRED [the Commission] shall renew the certification and the individual may resume CNG activities.

(e) Expired certification(s). Any renewal submitted after the August 31 deadline shall be considered expired. If an individual wishes to renew a certification that has been expired for less than one year, that individual shall submit the annual renewal fee and late filing fee, and proof of successful completion of the examination required for certification. Upon verification that the individual's certification has not been suspended, revoked, or expired for one year or longer, AFRED [the Commission] shall renew the individual's certification and the individual may resume CNG activities.

§13.73. Employee Transfers [Other Fees for Employee Transfer].

A licensee shall notify AFRED [the Commission] when a previously certified person is hired, by [immediately] filing CNG Form 1016A along with a \$10 filing fee [with the Commission]. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous and new licensee-employer, and types of CNG [related] work to be performed by the newly-hired certified employee.

§13.75. Franchise Tax Certification and Assumed Name Certificate.

(a) Any applicant for an original or renewal license that is a corporation or limited liability company must file a CNG Form 1026 with the License and Permit Section of the Gas Services Division (the Section) ~~[eommission]~~ prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comptroller of Public Accounts as an alternative to filing the CNG Form 1026. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by the Section ~~[this eommission]~~.

(b) (No change.)

§13.80. Requests for CNG Classes.

Requests for Commission staff to conduct a CNG training class for CNG activities under the Commission's jurisdiction shall be submitted to the AFRED training section. The AFRED training section may conduct the requested class at its discretion. The nonrefundable fee for a CNG training class is \$250 if no overnight expenses are incurred by the AFRED training section, or \$500 if overnight expenses are incurred. AFRED may waive the class fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601162

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



16 TAC §13.80

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.80. CNG Continuing Education Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601165

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

16 TAC §§13.92 - 13.94, 13.102

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.92. System Component Qualification.

System components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to General Rules for Compressed Natural Gas (CNG) ~~[and]~~ Equipment Qualifications ~~[Identification]~~).

§13.93. General.

(a) - (b) (No change.)

(c) Authorized automatic dispenser(s) shall comply with §13.25(k) of this title (relating to Filings Required for Stationary CNG Installations ~~[- Appurtenances and Equipment]~~). Existing dispensers may be modified, provided the modifications include only those components listed as approved by a laboratory as discussed in §13.25(k) of this title, and are installed in a workmanlike manner in accordance with industry standards.

(d) The authorized automatic dispenser shall have the following features.

(1) - (7) (No change.)

(8) The fueling connector shall be compatible with the fueling connection of the vehicle as specified in ~~[- (See)]~~ §13.34 of this title (relating to Vehicle Fueling Connection).~~[-]~~ The fueling connector shall have the following safety features:

(A) - (B) (No change.)

(e) All CNG storage installations, and installations protected by guardrails only, must comply with the sign and/or lettering requirements of Table 1 of this section.

Figure: 16 TAC §13.93(e)

§13.94. Location of Installations.

(a) - (c) (No change.)

(d) Compression, storage, and dispensing equipment shall be located aboveground and installed according to the distances specified in Table 1 of this section. The compression, storage, and dispensing equipment shall not be placed in any area directly beneath an electric transmission or distribution line(s) (excluding a customer service line) and that area which is six feet to either side of the line. If this distance

is not adequate to prevent the broken ends of the electric transmission or distribution line(s) and voltage from contacting the CNG equipment in the event of breakage of any conductor, then other suitable means of protection designed and constructed so as to prevent such contact with the equipment may be used if approved by the Commission prior to installation. The request for approval must be in writing and specify the manner in which the equipment will be protected from contact, including specifications for materials used. If approval is not granted, the equipment must be located the distance required by this section from the transmission line to prevent such contact.
Figure: 16 TAC §13.94(d)

(e) - (f) (No change.)

§13.102. Installation of Electrical Equipment.

(a) Electrical installations located within the vicinity of any compressor, cascade, or dispensing equipment shall be in accordance with the National Electrical Code (NEC) for Class 1, Group D: Hazardous Locations, Division 2 area. A Division 2 area is where combustible gases are present only under abnormal conditions. This requirement does not apply to residential installations, including manufactured housing. The classified area shall not extend beyond an unpierced wall, roof, or vapor tight partition. The vicinity of any compressor, cascade, or dispensing equipment is that area indicated by the following chart.

Figure: 16 TAC §13.102(a)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601166

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §13.141

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.141. System Testing.

(a) - (c) (No change.)

(d) When a compressed natural gas (CNG) cylinder is involved in an accident or fire causing damage to the cylinder, the

cylinder shall be replaced or removed and returned to a currently licensed Category 1 licensee (manufacturer) or Category 4 licensee (tester) to be inspected and retested in accordance with the originally manufactured specifications. Before being returned to service, a CNG Form 1008, Manufacturers Report of Retest or Repair, shall be sent to the Safety Division [LP-Gas Section].

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601167

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

16 TAC §13.183

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§13.183. System Component Qualifications.

System components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to General Rules for Compressed Natural Gas (CNG) Equipment Qualifications).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601169

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas proposes amendments to §§14.2007, 14.2010, 14.2019, 14.2020, 14.2034, 14.2043, 14.2049, 14.2052, and 14.2310, relating to Definitions; LNG Report Forms; Certification Requirements; Employee Transfers; Self-Insurance Requirements; Temporary Installations; Report of LNG Incident/Accident; Application for an Exception to a Safety Rule; and Emergency Refueling. The Commission also proposes the repeal of §14.2021, relating to LNG Continuing Education Requirements, and new §14.2021, relating to Requests for LNG Classes.

The Commission proposes the amendments in part as a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005). HB 1162 amended Texas Natural Resources Code, §116.034 to provide that the Commission may adopt rules establishing training and seminar attendance requirements for persons required or who wish to be licensed or registered to perform liquefied natural gas (LNG) activities, but is not required to do so. Additional proposed amendments to these rules are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The specific rule affected by HB 1162 is §14.2021, relating to LNG Continuing Education Requirements, which the Commission proposes to repeal and replace with proposed new §14.2021, Requests for LNG Classes. Current §14.2021 provides for continuing education requirements for persons holding an LNG license or their representatives. In general, licensees and their representatives were to attend a continuing education class once every four years. Due to budget and staff limitations, the Commission has no LNG continuing education classes, and because as of January 2006 there are only nine LNG licensees and about 41 individual LNG certificate holders, the Commission finds that its training and continuing education resources are more efficiently and effectively employed elsewhere. In addition, most LNG licensees are large companies with highly trained staff, as required by the technology used in LNG installations.

The Commission offers training courses on LNG activities under the Commission's jurisdiction through the Alternative Fuels Research and Education Division (AFRED). Under the wording in proposed new §14.2021, requests for Commission staff to conduct an LNG class should be submitted to AFRED, which may schedule and conduct the class at its discretion. The nonrefundable fee is \$250 for a class where no overnight expenses are incurred by AFRED staff, or \$500 if overnight expenses are incurred. AFRED may waive the fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

The Commission proposes amendments to §14.2019, relating to Certification Requirements, to make the rule and procedures consistent with the same procedures for the Commission's liquefied petroleum gas (LP-gas) certification requirements. In addition, some of the amendments clarify that AFRED is the Commission division that offers the examinations, as indicated by the proposed amendments in subsection (a)(4). In proposed subsection (a)(5), AFRED will notify individuals of their examination results within 15 days, rather than 30 days of the date of the examination. The only change proposed to the Table in §14.2019 is the deletion of the row referring to the Category 35 course of instruction, which is no longer offered.

The Commission proposes other amendments that are non-substantive and result in no changes to current requirements or procedures. In §14.2007, relating to Definitions, the Commission proposes a new definition for "AFRED." The Commission

proposes to delete the definitions for "Administrative Procedure Act," "Primary component," "PSF," "PSI," "PSIA," "Right-of-way," and "TEMA" because those terms are not used in Chapter 14. The Commission proposes to amend the definition of "Company representative" to delete the reference to "courses" because there are no required LNG courses. The Commission proposes to delete the definition of "Division" because LNG activities are divided among AFRED, the Gas Services Division, and the Safety Division; in each substantive rule that refers to "a division," the specific division is noted. The Commission proposes to amend the definition of "Final approval" to replace the reference to "the Commission" with "a division." The Commission proposes to amend the definitions for "Licensed," "Licensee," and "Tentative approval" to change "the Commission" to "the Gas Services Division" to be more specific. The remaining amendments proposed in this rule renumber the unchanged definitions as necessary.

Proposed amendments in §14.2010, relating to LNG Report Forms, change the order of two forms so that the form numbers are in numerical order.

In §14.2020, relating to Employee Transfers, the Commission proposes to add a reference to AFRED and to delete the requirement that the LNG Form 2016A be received by the Commission within a specific time.

The Commission proposes to amend §14.2034(g) to update and correct the citation to the Texas Workers' Compensation Act.

In §14.2043, relating to Temporary Installations, in subsections (b), (c), and (g), the Commission proposes to identify the correct division, rather than the general reference to "the Commission." In subsection (h), "Pipeline Safety Section" is now "Safety Division."

Amendments proposed in §§14.2049, 14.2052, and 14.2310, relating to Report of LNG Incident/Accident; Application for an Exception to a Safety Rule; and Emergency Refueling, respectively, provide specific references to the Safety and Gas Services Divisions for clarity.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that for each year of the first five years the proposed amendments, repeal, and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments, repeal, and new section.

Mr. Kelly has also determined that for each year of the first five years the amendments, repeal, and new section are in effect the public benefit anticipated as a result of enforcing the amendments will be the better understanding of the rule requirements for the LNG industry and the general public. There is no anticipated economic cost to individuals or small businesses required to comply with the proposed amendments, repeal, or new section; a request for an LNG class, which may incur a \$250 or \$500 fee, is voluntary.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Mr. Kelly has determined that there is no adverse economic effect on small businesses or micro-businesses, because the amendments proposed in this rulemaking are non-substantive and do

not change any requirements for LNG licensees and their representatives, certificate holders, or ultimate consumers.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Thomas Petru at (512) 463-6930. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments and new section under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2007, 14.2010, 14.2019 - 14.2021, 14.2034, 14.2043, 14.2049, 14.2052

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§14.2007. Definitions.

The following words and terms when used in the Regulations for Liquefied Natural Gas shall have the following meanings unless the context clearly indicates otherwise.

(1) AFRED--The Commission's Alternative Fuels Research and Education Division.

~~{(4) Administrative Procedure Act--Texas Government Code, Chapter 2001.}~~

(2) - (4) (No change.)

(5) Approved--Authorized by a [the] Division or the Commission.

(6) - (13) (No change.)

(14) Company representative--An owner or employee of a licensee designated by that licensee to take any required examinations [courses and exams] and to actively supervise LNG operations of the licensee.

(15) - (20) (No change.)

~~{(21) Division--The Director of the Gas Services Division of the Railroad Commission of Texas or the director's delegate.}~~

(21) [(22)] DOT--The United States Department of Transportation.

(22) [(23)] Employee--Any individual who renders or performs any services or labor for compensation, including individuals

hired on a part-time or temporary basis, full-time or permanent basis; independent contractors; and owner-employees.

(23) [(24)] Failsafe--Design features which provide for safe conditions in the event of a malfunction of control devices or an interruption of an energy source or an emergency shutdown.

(24) [(25)] Final approval--The authority issued by a division [the Commission] or the Railroad Commission allowing the introduction of LNG into a container and system.

(25) [(26)] Fired equipment--Any equipment in which the combustion of fuels takes place.

(26) [(27)] Fixed-length dip tube--A pipe with a fixed open end positioned inside a container at a designated elevation to measure a liquid level.

(27) [(28)] General Rules of Practice and Procedure of the Railroad Commission of Texas--Chapter 1 of this title (relating to Practice and Procedure).

(28) [(29)] Ignition source--Any item, substance, or event having adequate temperature and energy release of the type and magnitude sufficient to ignite any flammable mixture of gases or vapors that could occur at a site.

(29) [(30)] Impounding area--An area defined through the use of dikes or the topography at the site for the purpose of containing any accidental spill of LNG.

(30) [(31)] Individual--One human being. (See also "Person".)

(31) [(32)] Interim approval--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LNG installation.

(32) [(33)] Labeled--The attachment to equipment or materials of a label, symbol, or other identifying mark of a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and which publishes its findings in a list indicating that the equipment either meets appropriate standards or has been tested and found suitable for use in a specified manner.

(33) [(34)] LFL--Lower flammability limit.

(34) [(35)] Licensed--Authorized to perform LNG activities through the issuance of a valid license by the Gas Services Division [Commission].

(35) [(36)] Licensee--An applicant that has [A person which has applied for and] been granted an LNG license by the Gas Services Division [commission].

(36) [(37)] Listed--The inclusion of equipment or materials in a list published by a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(37) [(38)] LNG--Natural gas, consisting primarily of methane, that has been condensed to liquid by cooling.

(38) [(39)] LNG system--A system of safety devices, containers, and other LNG equipment installed at a facility or on a vehicle and designed for use in the sale, storage, transportation for delivery, or distribution of LNG.

(39) [(40)] LNG transport--Any vehicle or combination of vehicles and LNG containers designed or adapted for use or used prin-

cipally as a means of moving or delivering LNG from one place to another, including but not limited to any truck, trailer, semi-trailer, cargo tank, or other vehicle used in the distribution of LNG.

(40) [(41)] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, and which is used primarily in the conveyance of the general public.

(41) [(42)] Maximum allowable working pressure--The maximum gauge pressure permissible at the top of completed equipment, containers, or vessels in their operating position for a design temperature.

(42) [(43)] Mobile fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply for uses other than motor fuel.

(43) [(44)] Mobile fuel system--An LNG system to supply fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(44) [(45)] Motor fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply to an engine used to propel the vehicle.

(45) [(46)] Motor fuel system--An LNG system to supply LNG as a fuel for an engine used to propel the vehicle.

(46) [(47)] NEC--National Electric Code (NFPA 70).

(47) [(48)] NFPA--National Fire Protection Association.

(48) [(49)] Noncombustible material--A solid material which in no conceivable form or combination with other material will ignite.

(49) [(50)] Nonlicensee--A person not required to be licensed, but which shall comply with all other applicable Regulations for Liquefied Natural Gas.

(50) [(51)] Operations supervisor--An individual who actively supervises LNG operations at an outlet.

(51) [(52)] Outlet--A site operated by an LNG licensee at which the business conducted materially duplicates the operation for which the licensee is initially granted a license.

(52) [(53)] Person--An individual, sole proprietor, partnership, firm, joint venture, corporation, association, or any other business entity, state agency or institution, county, municipality, school district, or other governmental subdivision.

(53) [(54)] Point of transfer--The point at which a connection is made to transfer LNG from one container to another.

(54) [(55)] Pressure relief valve--A valve which is designed both to open automatically to prevent a continued rise of internal fluid pressure in excess of a specified value (set pressure) and to close when the internal fluid pressure is reduced below the set pressure.

(55) [(56)] Pressure vessel--A container or other component designed in accordance with the ASME Code.

[(57) Primary component--Those safety-related components which may be stressed to a significant level, those whose failure would permit release of flammable fluids, and those subject to thermal shock. Primary components include but are not limited to the following parts of a single-wall tank or of the inner tank in a double-wall tank: seals, gaskets, shell plates, bottom plates, roof plates, knuckle plates, compression rings, shell stiffeners, manways, and nozzles including reinforcement, shell anchors, pipe, tubing, forging, and bolting.]

(56) [(58)] Property line--That boundary which designates the point at which one real property interest ends and another begins. [(See also "Right-of-way".)]

[(59) PSF--Pounds per square foot.]

[(60) PSI--Pounds per square inch.]

(57) [(61)] PSIG--Pounds per square inch gauge.

[(62) PSIA--Pounds per square inch absolute.]

(58) [(63)] Public transportation vehicle--A vehicle for hire or service to the general public including but not limited to taxis, buses, and airport courtesy cars.

(59) [(64)] Railroad Commission of Texas--The members of the Railroad Commission of Texas.

(60) [(65)] Repair to container--The correction of damage or deterioration to an LNG container, the alteration of the structure of such a container, or the welding on such a container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

[(66) Right-of-way--The strip of land over which a public roadway such as a street, alley, or highway is built, or land occupied by a railroad for its main line.]

(61) [(67)] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(62) [(68)] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(63) [(69)] Special transit vehicle--A vehicle which is primarily used by a school or mass transit authority for special transit purposes such as transport of mobility impaired individuals.

[(70) TEMA--Tubular Exchanger Manufacturers Association.]

(64) [(71)] Temporary installation--A dispensing station, either skid-mounted or on a transport unit, that is intended to be used for a finite period of time.

(65) [(72)] Tentative approval--The authority issued by the Gas Services Division [Commission] without a hearing allowing construction of an LNG installation.

(66) [(73)] Thermal expansion relief valve--A pressure relief valve that is activated by pressure created by a fluid temperature rise.

(67) [(74)] Trainee--An individual employed by a licensee for a period not to exceed 45 days without that individual having successfully completed the required examinations for the LNG activities to be performed.

(68) [(75)] Transfer area--That portion of an LNG refueling station where LNG is introduced into or dispensed from a stationary installation.

(69) [(76)] Transfer system--All piping and equipment used in transferring LNG between containers.

(70) [(77)] Transition joint--A connector fabricated of two or more metals used to join piping sections of two different materials.

(71) [(78)] Transport--Any bobtail or semi-trailer equipped with one or more containers.

(72) ~~[(79)]~~ Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(73) ~~[(80)]~~ Ultimate consumer--The person controlling LNG immediately prior to its ignition.

(74) ~~[(81)]~~ Vaporizer--A device other than a container that receives LNG in liquid form and adds sufficient heat to convert the liquid to a gaseous state.

(75) ~~[(82)]~~ Water capacity--The amount of water in gallons required to fill a container.

§14.2010. LNG Report Forms.

Under the provisions of the Texas Natural Resources Code, Chapter 116, the Commission has designated the following forms for use [by the division].

(1) - (11) (No change.)

(12) LNG Form 2019. Transfer of Liquefied Natural Gas Bulk Storage Plants. ~~[LNG Form 2020: Report of LNG Incident/Accident.]~~

(13) LNG Form 2020. Report of LNG Incident/Accident. ~~[LNG Form 2019: Transfer of Liquefied Natural Gas Bulk Storage Plants.]~~

(14) - (33) (No change.)

§14.2019. Certification Requirements.

(a) This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.

(1) (No change.)

(2) Each individual who performs LNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such LNG activities shall be properly trained by a competent person in the safe performance of such LNG activities. [Employees of an ultimate consumer not required to submit to examination under this section shall be properly trained by an individual who passed the examination in the installation, maintenance, and storage of LNG; LNG systems, and vehicles fueled by LNG; and in the operation of equipment during the filling of and dispensing from storage containers. Such training shall also include the protection of containers and equipment against damage or tampering by unauthorized persons.]

(3) An individual wishing to submit to examination by the commission shall file LNG Form 2016 along with the appropriate fee listed in subsection (c) of this section with AFRED. ~~[the commission prior to examination. The commission shall notify the individual in writing of acceptance of LNG Form 2016.]~~

Figure: 16 TAC §14.2019(a)(3)

(4) An individual who has filed LNG Form 2016 and the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road,

Austin, Texas, [Austin office] between the hours of 8:00 a.m. and 12:00 noon [2:00 p.m.], Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center. Dates and locations of available Commission LNG examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion. [Applicants who wish to take the rules examination at sites other than the Austin office shall submit LNG Form 2016 and the applicable fee to the Commission's Austin office at least three business days prior to the examination date in order to receive an admittance letter from the Commission. The admittance letter shall be required at all exam sites other than the Austin office.]

(5) Within 15 ~~[30]~~ days of the date an individual takes an examination, AFRED [the Commission] shall notify the individual of the results of the examination. The individual shall pass the rules examination with a score of at least 75%.

(A) If the examination is graded or reviewed by a testing service, AFRED [the Commission] shall notify the individual of the examination results within 14 days of the date AFRED [the Commission] receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED [the Commission] shall notify the individual of the reason for the delay before the 90th day. AFRED [The Commission] may require a testing service to notify an individual of the individual's examination results.

(B) Successful completion of any required examination shall be credited to the individual. An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(C) Any individual who fails an examination shall be immediately disqualified from performing any LNG activities covered by that examination ~~[and shall not retake the same examination for at least 24 hours, unless approved by the assistant director for the LP-Gas Section, Gas Services Division, or another designated Commission employee].~~ If requested ~~[in writing]~~ by an individual who failed the examination, AFRED [the Commission] shall furnish the individual with an analysis of the individual's performance on the examination. Any individual who fails an examination administered by the Commission at the Austin location only may retake the same examination one additional time during a business day. Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's delegate.

(b) A licensee or ultimate consumer other than a political subdivision may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination, subject to the following conditions:

(1) (No change.)

(2) The licensee or ultimate consumer other than a political subdivision shall ensure that LNG Form 2016 is on file with AFRED [the Commission] for each trainee at the time the trainee begins supervised LNG activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.

(3) - (4) (No change.)

(5) Once a trainee has taken the rules examination, the training period shall cease and the individual shall perform no LNG activities which require certification until the individual is notified by AFRED [the Commission] that the individual passed the examination.

(c) The applicant shall pay to AFRED [the Commission] a \$50 examination fee for each management-level examination and a \$20 fee for each employee-level examination in advance of each required examination. Examination fees are nonrefundable. An applicant who fails an examination shall pay the full examination fee for each subsequent examination.

(d) AFRED [The Commission] shall notify licensees of any employees' pending renewals, or shall notify the individual if not employed by a licensee, in writing, at the address on file with AFRED [the Commission] no later than March 15 of a year for the May 31 renewal date of that year. To maintain active status, a certificate holder shall pay the \$25 annual renewal fee to AFRED [the Commission] on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(1) (No change.)

(2) Any lapsed or expired renewals submitted after May 31 of each year shall include a \$20 late-filing fee in addition to the renewal fee and proof of successful completion of the examination required for the certification no later than close of business on August 31 or, if August 31 falls on a weekend or state holiday, close of business on the last business day before August 31. Upon receipt of the renewal fee, late-filing penalty, and proof of successful completion of the examination required for the certification, AFRED [the Commission] shall verify that the individual's certification has not been suspended, revoked, or expired for one year or longer. After verification, AFRED [the Commission] shall renew the certification and the individual may resume LNG activities.

(e) Expired certifications. Any renewal submitted after the August 31 deadline shall be considered expired. If an individual wishes to renew a certification that has been expired for less than one year, that individual shall submit the annual renewal fee and late filing fee, and proof of successful completion of the examination required for certification. Upon verification that the individual's certificate has not been suspended, revoked, or expired for one year or longer, AFRED [the Commission] shall renew the individual's certification and the individual may resume LNG activities.

[(f) Applicants for license shall attend the applicable courses of instruction as specified in Table 4 of subsection (a) of this section. The Category 35 course of instruction shall be held in Austin or any Commission-approved facility at times to be determined by the Commission; shall include at a minimum training over container installation, refueling facilities, motor fuel installations, and stationary installations, and shall not exceed 40 hours. Course attendees shall pay the fee to the Commission for the course. The fee shall be established by the division director and may vary as needed to cover the costs for a particular seminar in any given location. The seminar fee does not include the required examination fee.]

§14.2020. Employee Transfers.

When a previously certified individual is hired, the licensee shall notify AFRED [the Commission] by filing a properly completed and signed LNG Form 2016A along with a \$10 filing fee[, which shall be received by the Commission or postmarked within ten calendar days of such hiring]. Notice shall include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous and new licensee-employer, and types of LNG related work to be performed by the newly-hired certified employee.

§14.2021. Requests for LNG Classes.

Requests for Commission Staff to conduct an LNG training class for LNG activities under the Commission's jurisdiction shall be submitted to the AFRED training section. The AFRED training section may conduct the requested class at its discretion. The nonrefundable fee for an LNG training class is \$250 if no overnight expenses are incurred by AFRED, or \$500 if overnight expenses are incurred. AFRED may waive the class fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

§14.2034. Self-Insurance Requirements.

(a) - (f) (No change.)

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for workers' compensation coverage or general liability and/or motor vehicle liability insurance [by submitting LNG Form 2995 as evidence of self-insurance coverage] if permitted by the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A [state workers' compensation act, Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h]; and Texas Natural Resources Code, §116.036, by submitting LNG Form 2995 to the Commission.

(h) (No change.)

§14.2043. Temporary Installations.

(a) (No change.)

(b) Temporary installations shall be limited to one year. If the temporary installation needs to remain in service for more than one year, the licensee or nonlicensee responsible for the temporary installation shall inform the Safety Division (the Division) [Commission] of this extension of time at least 30 days prior to the expiration of the one-year period.

(c) Temporary installations shall be protected by guardrailings as specified in §14.2101(f) of this title (relating to Uniform Protection Standards) unless otherwise approved by the Division [Commission].

(d) - (f) (No change.)

(g) The Division [Commission] may inspect temporary installations for compliance with these requirements.

(h) Any temporary installation subject to the jurisdiction of United States Department of Transportation under 49 Code of Federal Regulations, Part 193, shall comply with the applicable DOT rules and any requirements of the Division [Commission's Gas Services Division, Pipeline Safety Section].

§14.2049. Report of LNG Incident/Accident.

(a) If an incident or accident occurs during transport, as a result of a pullaway, or where LNG is or is suspected to be the cause, the licensee or nonlicensee owning, operating, or servicing the installation shall notify the Safety Division [division] by telephone as soon as possible after the licensee or nonlicensee has knowledge of the incident or accident if any of the following occurs:

(1) - (3) (No change.)

(b) Any transport unit required to be registered with the Gas Services Division [Commission] in accordance with §14.2704 of this title (relating to Registration and Transfer of LNG Transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to the Safety Division [Commission], regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is

involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to the Safety Division [~~Commission~~], regardless of the accident location.

(c) - (d) (No change.)

(e) Following the initial telephone report of any of the incidents or accidents described in this section, the licensee shall file LNG Form 2020 with the Safety Division [~~division~~]. The form shall be postmarked within 14 calendar days of the date of initial notification to the Safety Division [~~division~~].

§14.2052. Application for an Exception to a Safety Rule.

(a) Any person may apply for an exception to the provisions of this chapter by filing LNG Form 2025 along with supporting documentation and a \$50 filing fee, with the Safety Division (the Division) [~~Commission~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and information which may assist the Division [~~Commission~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule shall include the following items and procedures:

(1) The applicant shall send a copy of LNG Form 2025 by certified mail, return receipt requested, to all affected entities on the same date on which the form is filed with or sent to the Division [~~Commission~~]. The applicant shall include a notice to the affected entities that any objection shall be filed with the Division [~~Commission~~] within 18 calendar days of the postmark. The applicant shall file all return receipts with the Division [~~Commission~~] as proof of notice.

(2) - (3) (No change.)

(4) The Division [~~Commission~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed at the Division [~~Commission~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. The Division [~~Commission~~] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) The Division [~~Commission~~] shall review the application within 21 business days of receipt of the application. If the Division [~~Commission~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the division director may grant administratively the exception if the director determines that the installation, as proposed, does not adversely affect the health or safety of the public. The Division [~~Commission~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. The Division [~~Commission~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the director denies the exception, the Division [~~Commission~~] shall notify applicant, in writing, of the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure

of the Railroad Commission of Texas. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when the Division [~~Commission~~] receives an objection, as set out in subsection (d) of this section from any affected entity or when the applicant requests one following an administrative denial. The Division [~~Commission~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission, and the rules in this chapter.

(g) - (i) (No change.)

(j) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by the Division [~~Commission~~] of an incomplete request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601159

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 475-1295



16 TAC §14.2021

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§14.2021. LNG Continuing Education Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601160

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 475-1295



SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

16 TAC §14.2310

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on February 28, 2006.

§14.2310. *Emergency Refueling.*

(a) - (b) (No change.)

(c) Prior to the mobile refueling vehicle being placed into service, the licensee or non-licensee shall file with the Safety Division (the Division) [~~division~~] a drawing showing the mounting, type of container, water capacity of the container, type of vehicle to be used, and the method of mounting. The vehicle shall not be placed into service until the Division [~~division~~] ensures that it complies with the applicable rules.

(d) Emergency refueling vehicles are not required to be registered with the License and Permit Section of the Gas Services Division [~~Commission~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601161
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers proposes an amendment to §133.11, relating to Types of Licenses. The proposed amendment will clarify the requirements for comity licensure under NAFTA.

The proposed rule change limits licensure via the NAFTA agreement to applicants that are citizens of Canada or Mexico and are licensed in good standing in their home jurisdiction. The proposed rule change also clarifies language regarding comity licensure and removes references to reciprocal licensure.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is better protection from unqualified engineers and applicants that are not eligible via the NAFTA agreement.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.11. *Types of Licenses.*

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal [~~or Comity~~] License[: (U.S. states or territories): Pursuant to §1001.311 of the Act, the board has reviewed the licensing requirements of the jurisdictions listed in this paragraph and has found them to be substantially equivalent to the requirements in Texas. The board shall waive the application requirements of §133.21 for an applicant who is licensed in good standing with at least one of the jurisdictions listed in this paragraph and submits the documentation as required in §133.27(a) of this chapter. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a standard license]. The board does not recognize any jurisdiction [U.S. state or territory] for reciprocity [~~or comity~~] at this time.

(3) ~~[Reciprocal or]~~ Comity License: (Canada and the United Mexican States through NAFTA). Pursuant to §1001.311 of the Act and the NAFTA Mutual Recognition Agreement, the board has reviewed the licensing requirements of Canada and the United Mexican States and has found them to be substantially equivalent to the requirements in Texas. A ~~[reciprocal or]~~ comity license issued under this paragraph has full status of and shall be issued as a temporary license. The board may waive the application requirements of §133.21 for applicants who:

(A) are citizens of Canada or the United Mexican States;

(B) ~~[(A)]~~ are currently licensed in good standing with at least one of the jurisdictions of Canada or the United Mexican States [listed in this paragraph];

(C) ~~[(B)]~~ meet the experience requirements of §133.69 (c) of this chapter; and

(D) ~~[(C)]~~ submit the documentation as required in §133.27(a) ~~[(b)]~~ of this chapter.

(4) Temporary License. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. A temporary license may only be renewed twice. The executive director shall be authorized to convert a standard license to a temporary license.

(5) Provisional. The Board does not issue provisional licenses at this time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601398

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



SUBCHAPTER C. APPLICATION REQUIREMENTS

22 TAC §133.25

The Texas Board of Professional Engineers proposes an amendment to §133.25, relating to Applications from Engineering Educators. The rule proposal is a clarification of the requirements for application for licensure via a waiver of one or more examinations.

The proposed rule change clarifies language regarding licensure via a waiver of one or more examinations for Engineering Educators. The proposed rule change reorganizes current rule language in conjunction with proposed rule changes to §133.43 and §133.69 (published elsewhere in this issue of the *Texas Register*).

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that

there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is clarification of the licensure process.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.25. Applications from Engineering Educators.

(a) Persons who are engineering educators instructing engineering courses in an institution of higher education or a private or independent institution of higher education, as defined in the Education Code §61.003[; and who began teaching engineering prior to September 1, 2004;] are permitted to seek licensure utilizing an alternate application.

(b) The minimum educational qualifications are as follows:

(1) Earned doctoral degree in[;]

~~[(A)]~~ engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the current version of the ABET Accreditation Yearbook and or the current version of the ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(2) ~~[(B)]~~ Earned doctoral degree in engineering or another related field of science or mathematics assessed and approved by the board. [;]

(2) To request a waiver of the fundamentals of engineering and principles and practice of engineering examinations, the applicant must meet the experience requirements of §133.69(d), consisting of:]

~~[(A)]~~ teaching experience in an EAC/ABET-approved program; or]

~~[(B)]~~ other acceptable, creditable engineering experience, including, but not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students; postdoctoral fellows; or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education; or]

~~[(C)]~~ a combination of teaching and acceptable, creditable engineering experience.]

(c) ~~[(b)]~~ An engineering educator, applying under the alternate process, shall submit:

- (1) an alternate application form;
- (2) a supplementary experience record:

(A) For the faculty approved for promotion or tenure through the Dean of Engineering office level, submit a dossier (comprehensive resume or curriculum vitae) prepared for tenure and/or promotion consideration, OR, for tenured faculty, current resume containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) college/university transcripts;

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board;

(7) verification of passage of examination(s) from other jurisdictions as required under §133.61(g) (relating to Engineering Examinations), if applicable; and

(8) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(d) ~~[(e)]~~ Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(e) ~~[(d)]~~ This section does not prohibit any engineering educator from applying for licensure under the standard application process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601399

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



22 TAC §133.27

The Texas Board of Professional Engineers proposes an amendment to §133.27, relating to Application for Reciprocal or Comity License. The proposed amendment will change the name of the

section and will clarify the requirements for application for comity licensure under NAFTA.

The proposed rule change clarifies language regarding comity licensure and removes references to reciprocal licensure.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is better protection from unqualified engineers and applicants that are not eligible via the NAFTA agreement.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.27. Application for ~~[Reciprocal or]~~ Comity License.

~~[(a)]~~ The applicant applying for a reciprocal or comity license from a U.S. state or territory shall:

~~[(1)]~~ submit a reciprocal or comity application form;

~~[(2)]~~ pay the application fee established by the Board;

~~[(3)]~~ submit a completed Texas Engineering Professional Conduct and Ethics examination; and

~~[(4)]~~ submit a verification of a license in good standing from one of the jurisdictions listed in §133.11(2) of this chapter (relating to Types of Licenses);

(a) ~~[(b)]~~ The applicant applying for a ~~[reciprocal or]~~ comity license from Canada or the United Mexican States shall:

(1) submit a NAFTA ~~[reciprocal or]~~ comity application form;

(2) proof of educational credentials pursuant to §133.33 or §133.35 (relating to Proof of Educational Qualifications) including:

(A) official transcript(s) of qualifying degree(s), and

(B) commercial evaluation(s) of a non-accredited or non-approved degree(s), as applicable;

(3) supplementary experience record as required under §133.41 (relating to Supplementary Experience Records);

(4) reference statements as required under §133.51(a)(3) and §133.53 of this chapter,

(5) passing scores of TOEFL and TSE as described in §133.21(c) of this chapter;

(6) a statement describing criminal convictions, if any, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges,

(8) submit a completed Texas Engineering Professional Conduct and Ethics examination,

(9) pay the application fee established by the Board; and

(10) submit a verification of a license in good standing from one of the jurisdictions listed in §133.11(3) of this chapter (relating to Types of Licenses).

(b) [(e)] Upon receipt of the application and verification of a license in good standing, the board may issue to the applicant a temporary license [the appropriate license type] as described under §133.11 of this chapter, unless the application requires further review under §133.83 of this chapter (relating to Staff Review, Evaluation and Processing of Applications) or §133.85 of this chapter (relating Board Review of and Action on Applications). For those applications requiring further Board review, the Board may request additional information to clarify an application, as needed. Pursuant to §1001.453 of the Act, the Board may review the license holders status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601400

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



SUBCHAPTER E. EXPERIENCE

22 TAC §133.43

The Texas Board of Professional Engineers proposes an amendment to §133.43, relating to Experience Evaluation. The rule proposal is a clarification of the requirements for application for licensure via a waiver of one or more examinations.

The proposed rule change clarifies language regarding licensure via a waiver of one or more examinations for Engineering Educators. The proposed rule change reorganizes current rule language in conjunction with proposed rule changes to §133.25 and §133.69 (published elsewhere in this issue of the *Texas Register*).

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is clarification of the licensure process.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.43. Experience Evaluation.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the submitted materials indicate good character and reputation;

(D) whether the experience was gained in accordance with the provisions of the Act;

(E) whether the experience was gained in one dominant branch;

(F) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice;

(G) whether short engagements have had an impact upon professional growth; and

(H) experience gained in relation to or concurrent with the applicant's education. Experience claimed prior to an applicant's receiving a conferred degree must:

(i) be substantiated in the supplementary experience record;

(ii) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(iii) reflect that, at the time the experience was gained, the applicant:

(I) had successfully passed junior and senior level engineering courses and applied that engineering and knowledge in the claimed experience; or

(II) received sufficient education and training under the supervision of an engineer.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(b) One year of experience credit may be granted for each post-baccalaureate engineering degree earned by an applicant, provided:

(1) the applicant has a baccalaureate degree in engineering; and

(2) the post-baccalaureate degree is from an engineering program where either the graduate or undergraduate degree in the same discipline is accredited or approved by one of the organizations listed in §133.31(a)(1) of this chapter (concerning Educational Requirements for Applicants). Experience credit for all post-baccalaureate degrees is limited to a total of two years.

(c) Engineering Educators applying for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Examinations) will not receive additional experience credit pursuant to subsection (b) of this section.

(d) [(e)] Experience gained in conjunction with or in relation to earning a post-baccalaureate degree, such as research or teaching assistant work, will not be credited in addition to experience credited pursuant to subsection (b) of this section.

(e) For Engineering Educator applicants applying under §133.25 of this chapter (relating to Applications from Engineering Educators), other acceptable creditable engineering experience may include, but is not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students, postdoctoral fellows, or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601401

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers proposes an amendment to §133.69, relating to Waiver of Examinations. The rule proposal is a clarification of the requirements for application for licensure via a waiver of one or more examinations.

The proposed rule change clarifies language regarding licensure via a waiver of one or more examinations. The proposed rule change reorganizes current rule language in conjunction with proposed rule changes to §133.25 and §133.43 (published elsewhere in this issue of the *Texas Register*).

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is clarification of the licensure process.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.69. Waiver of Examinations.

(a) Examinations are considered an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive one or both of the examinations [examination] on the fundamentals of engineering or [examination on] the principles and practice of engineering for applicants who:

- (1) do not pose a threat to the public health, safety, or welfare;
- (2) request a waiver in writing at the time the application is filed; and
- (3) meet the requirements of subsections (b)[;] or (c)[; or (d)] of this section.

(b) Waiver of Fundamentals of Engineering Examination. Applications for a waiver of the fundamentals of engineering examination will only be accepted from persons who meet the requirements of paragraphs (1) or (2) of this subsection.

(1) Standard Application:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have eight or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have twelve or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(2) Engineering Educator: meet the requirements of §133.25(a) and (b) of this chapter (relating to Applications from Engineering Educators).

(c) Waiver of Principles and Practice of Engineering Examination. Applications for a waiver of the principles and practice of engineering examination will only be accepted from persons who meet the requirements of paragraphs (1) or (2) of this subsection.

(1) Currently Licensed in Another Jurisdiction: Be currently licensed and in good standing in any U.S. state or territory, Canada, or the United Mexican States, and:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable

engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

(2) Engineering Educator:

(A) meet the requirements of §133.25(a) and §133.25(b)(1) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001;

(ii) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the requirements of §133.25(a) and §133.25(b)(2) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least eight years and began teaching engineering prior to September 1, 2001;

(ii) at least eight years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least six years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(d) An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering within the previous two years.

[(b) Persons requesting a waiver of the fundamentals of engineering examination must meet one of the following requirements:]

[(1) have 8 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); and meet the educational requirements of §1001.302(a)(1)(A) of the Act; or]

[(2) have 12 years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); and meet the educational requirements of §1001.302(a)(1)(B) of the Act; or]

[(3) have a Ph.D. degree in engineering from a college or university having an undergraduate or master's degree program in a related branch of engineering that is accredited or approved by EAC/ABET, and have:]

[(A) taught in an EAC/ABET-accredited or -approved program for at least four years and began teaching engineering prior to September 1, 2001; or]

[(B) at least four years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and began teaching engineering prior to September 1, 2001; or]

[(C) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).]

[(4) have a Ph.D. degree in engineering not qualifying under subsection (b)(3) of this section or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process, and have:]

[(A) taught in an EAC/ABET-accredited or -approved program for at least six years and who began teaching engineering prior to September 1, 2001; or]

[(B) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and who began teaching engineering prior to September 1, 2001; or]

[(C) at least six years of creditable engineering experience as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).]

[(5) Persons who meet the requirements to apply for licensure as an Engineering Educator under §133.25(a)(1) of this chapter (relating to Applications from Engineering Educators) and who are requesting a waiver of the fundamentals of engineering examination and permission to take the principles and practice of engineering examination may be granted the waiver with no minimum experience requirement.]

[(e) Persons currently licensed and in good standing in any U.S. state or territory, Canada, or the United Mexican States, and requesting a waiver of the principles and practice of engineering or a waiver of both the fundamentals of engineering examination and the principles and practice of engineering examination must meet one of the following requirements:]

[(1) have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(A) of the Act; or]

[(2) have 16 years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(B) of the Act.]

[(d) Persons who meet the requirements to apply for licensure as an Engineering Educator under §133.25(a)(1) of this chapter and who are requesting a waiver of the principles and practice of engineering or a waiver of both the fundamentals of engineering examination and the principles and practice of engineering examination must meet one of the following requirements:]

[(1) have a Ph.D. degree in engineering from a college or university having an undergraduate or master's degree program in a related branch of engineering that is accredited or approved by the Engineering Accreditation Commission of ABET (EAC/ABET), and have:]

[(A) taught in an EAC/ABET-accredited or -approved program for at least four years and began teaching engineering prior to September 1, 2001; or]

[(B) at least four years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and began teaching engineering prior to September 1, 2001; or]

[(C) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).]

[(2) have a Ph.D. degree in engineering not qualifying under subsection (d)(1) of this section or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process, and have:]

[(A) taught in an EAC/ABET-accredited or -approved program for at least six years and who began teaching engineering prior to September 1, 2001; or]

[(B) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and who began teaching engineering prior to September 1, 2001; or]

[(C) at least six years of creditable engineering experience as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).]

(e) An applicant is not eligible to request a waiver of the examination on the principles and practice of engineering if the applicant has taken and failed any examination on the principles and practice of engineering within the previous four years.

(f) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application, as provided in §133.51 of this chapter (relating to Reference Providers), and §133.52 of this chapter (relating to Reference Statements). The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601402

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER D. FIRM, SOLE PROPRIETORSHIP AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.77

The Texas Board of Professional Engineers proposes an amendment to §137.77, relating to Firm Registration Compliance. The proposed amendment will remove the 30-day amnesty period for firm registration.

The proposed rule change removes the 30-day amnesty period for firm registration, requiring all firms offering engineering services to the public to be registered with the Board prior to offering those services or using the word "engineering" in their name.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering

ing the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. Because the number of violations in any period is unknown, the specific impact on individuals required to comply with the proposed amendment cannot be assessed. However, more firms will be subject to possible enforcement action, including an administrative penalty, since the 30-day amnesty period will no longer be available. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is better protection from unqualified and unregistered engineering firms.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§137.77. Firm Registration Compliance.

(a) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall not offer or perform engineering services to the public unless registered with the board pursuant to the requirements of Chapter 135 (Relating to Firms and Sole Proprietorships) of this title.

(b) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all engineering work and activities that require a license that is performed in the primary, branch, remote, or project office(s).

(c) An active license holder who is a sole proprietor shall satisfy the requirement of the regular, full-time employee.

(d) No engineering services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

~~[(e) Pursuant to §1001.405(g) of the Act, a business entity that offers or is engaged in the practice of engineering in Texas and is found to not be registered with the board shall register with the board pursuant to the requirements of Chapter 135 of this title within 30 days of written notice from the board.]~~

~~[(e) [(f)] A business entity that offers or is engaged in the practice of engineering in Texas and is not registered with the board [that fails to comply with subsection (e) of this section] or [that] has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §§1001.501-508 of the Act and §139.35 of this title (relating to Penalties and Sanctions).~~

~~[(f) [(g)] The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional engineer for the firm.~~

~~[(g) [(h)] If a firm has notified the board that it is no longer offering or performing engineer services to the public, including the absence of a regular, full-time employee who is an active professional engineer licensed in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and services. If firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsections (e) [and (f)] of this section unless renewed.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601403

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 440-7723



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Optometry Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Optometry Board proposes the repeal of §279.6. The agency has incorporated the text of the repealed rule in §279.2 (30 TexReg 8099), pursuant to the provisions of House Bill 1025, 79th Legislature, Regular Session.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the proposed repeal of the rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Chris Kloeris also has determined that for each of the first five years the proposed repeal of the rule is in effect, the public benefits anticipated is that it will be easier for the licensees and public to access and determine all the requirements for the release and verification of a contact lens prescription. It has also been determined that the proposed repeal will not impose any additional costs on persons required to comply with the rule. The proposed repeal does not impose any new duties on small and micro businesses, and no adverse economic effect on small or micro businesses is forecast.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The repeal is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, and the Contact Lens Prescription Act, Texas Occupations Code, §§353.002, 353.005, 353.1015, 353.101, 353.104, 353.152, 353.156, 353.158 and 353.204 as amended or added by House Bill 1025, 79th Legislature, Regular Session, and federal law, 15 U.S.C. Sections 7601 - 7610.

No other sections are affected by this repeal.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets House Bill 1025 to require licensees to issue contact lens prescriptions at the completion of a contact lens exam and to verify prescriptions when requested by a dispenser authorized by the patient to obtain the verification, and requires the agency to adopt rules. Section 353.204 authorizes the agency to discipline optometrists and therapeutic optometrists for violations of the Contact Lens Prescription Act. The agency interprets the requirements of 15 U.S.C. Sections 7601 - 7610 to be similar to the requirements of House Bill 1025.

§279.6. *Interpretation of Requirements of Federal Contact Lens Prescription Law.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601394

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 305-8502



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 7. CLEAN AIR INTERSTATE RULE

30 TAC §§101.501 - 101.504, 101.506, 101.508

The Texas Commission on Environmental Quality (commission) proposes new §§101.501 - 101.504, 101.506, and 101.508.

The new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On May 12, 2005, EPA promulgated the Clean Air Interstate Rule (CAIR) to assist nonattainment areas in downwind states in achieving compliance with the national ambient air quality standards (NAAQS) for particulate matter less than or equal to 2.5 microns (PM_{2.5}) and eight-hour ozone. Twenty-eight eastern states and the District of Columbia were identified as upwind contributors to the nonattainment of the PM_{2.5} and eight-hour ozone NAAQS prompting the requirement for the reduction in emissions of sulfur dioxide (SO₂) and/or oxides of nitrogen (NO_x). Twenty-three states, including Texas, and the District of Columbia were found to contribute to the downwind nonattainment of

the PM_{2.5} NAAQS and are required to make reductions in annual emissions of SO₂ and NO_x. Twenty-five states and the District of Columbia, not including Texas, were found to contribute to the downwind nonattainment of the eight-hour ozone NAAQS and are required to reduce ozone-season NO_x emissions. EPA modeled 37 states, including Texas, for PM_{2.5} contribution using the Community Multiscale Air Quality Model. A criterion of 0.2 micrograms per cubic meter (µg/m³) was used for determining whether SO₂ and NO_x emitted in one state made a significant contribution to PM_{2.5} nonattainment in another state. State-by-state, zero-out modeling was then used to quantify the state's contribution for SO₂ and NO_x. EPA's modeling demonstrated that Texas provided a contribution of 0.29 µg/m³ with two downwind "linkages," Madison County, Illinois and St. Clair County, Illinois. For ozone contribution, 31 states in the eastern United States were modeled. Since Texas was not included in the modeling exercise, EPA did not determine that Texas contributed to ozone nonattainment in another state.

The NO_x and SO₂ reduction requirements under CAIR are being implemented in two phases by providing states with declining budgets. For NO_x, Phase I begins in 2009 and continues through the year 2014 with Texas receiving an initial NO_x budget of 181,014 tons annually. The Phase II NO_x budget will begin in 2015, with Texas receiving 150,845 tons annually. State SO₂ budgets are based on the allowance allocations provided under Federal Clean Air Act (FCAA), Title IV. Annual state budgets for Phase I, 2010 - 2014, are based on a 50% reduction of Title IV allowances allocated in the affected state. The initial SO₂ budget for Texas during Phase I is 320,946 tons. For Phase II, 2015 and thereafter, SO₂ budgets are based on a 65% reduction of Title IV allowances allocated in the affected state, with Texas receiving 224,662 tons.

EPA provided states with two compliance options for meeting the reduction requirements under CAIR: 1) meet the state's emission budget by requiring electric generating units (EGUs) to participate in an EPA-administered interstate cap and trade program; or 2) meet an individual state emissions budget through measures of the state's choosing. The 79th Legislature, 2005, enacted House Bill (HB) 2481, §2 (to be codified at Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.0173), requiring Texas to participate in the EPA-administered interstate cap and trade program through the incorporation by reference of the CAIR model trading rule. HB 2481 also provided specific direction for the methodology to be used in allocating the NO_x trading budget provided to Texas, identified an amount of CAIR NO_x allowances to be set-aside for new sources, and specified that reductions associated with CAIR would only be required from new and existing EGUs and not from other sources of SO₂ and NO_x emissions.

HB 2481 amended THSC, Chapter 382 by adding §382.0173. THSC, §382.0173(a) requires that the commission adopt rules "incorporat[ing] by reference 40 CFR Subparts AA through II and Subparts AAA through III of Part 96 and 40 CFR Subpart HHHH of Part 60." Additionally, THSC, §382.0173(b) requires the commission to "make permanent allocations that are reflective of the allocation requirements of 40 CFR Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 CFR Subpart HHHH of Part 60 . . . at no cost . . . using the {EPA's} allocation method as specified by Section 60.4142(a)(1)(i), as issued by that agency on May 12, 2005, or 40 CFR Section 96.142(a)(1)(i), as issued by that agency on May 18, 2005, as applicable with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection

(c)." THSC, §382.0173(c) provides additional requirements regarding NO_x allocations, specifically a requirement to maintain a special reserve of allocations for certain units, and requirements relating to establishing allocations for specific control periods. THSC, §382.0173(d) provided that its provisions applied only while the federal rules were enforceable and that the provisions of HB 2481 do "not limit the authority of the commission to implement more stringent emissions control requirements."

The commission interprets these requirements together in order to provide effect to the expressed intent of the legislature. Specifically, the commission interprets the language of new THSC, §382.0173(d) as not restricting existing authority to require further emissions control requirements, but not to interfere with, or change, the requirements of the CAIR NO_x and SO₂, or the Clean Air Mercury Rule (CAMR) mercury emission trading programs. The legislature expressed clear intent that the commission implement the CAIR and CAMR emission trading programs by requiring the incorporation by reference of the CAIR and CAMR program rules as promulgated by EPA, and requiring the use of EPA-specified allocation methodology, with some exceptions for CAIR NO_x allowances.

Under 40 Code of Federal Regulations (CFR) Part 96, EPA promulgated a model rule for the CAIR NO_x Annual Trading Program. This model rule is a market-based cap and trade system designed to reduce the costs of complying with the new NO_x and SO₂ reduction requirements. The CAIR model rule designates respective budgets for annual NO_x and SO₂ emissions within each state to be applied to all fossil fuel-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25 megawatts of electricity (MWe) and producing electricity for sale. The model rule provides flexibility in complying with the NO_x and SO₂ reduction requirements through the unrestricted banking of excess allowances and the trading of allowances between EGUs in affected CAIR states under common caps. For example, EGUs in Texas will be allowed to trade NO_x allowance allocations with other CAIR states participating in the CAIR NO_x Annual Trading Program, while the trading of SO₂ allowances will be permissible with CAIR states participating in the CAIR SO₂ Trading Program or the Title IV SO₂ Allowance Trading Program. The model rule provides states flexibility in the allocation methodology used to determine CAIR NO_x allowance allocations for each CAIR NO_x unit. CAIR states are then responsible for submitting the CAIR NO_x allowance allocations to EPA for recordation. CAIR SO₂ allowance allocations would be distributed by EPA based on the CAIR source's Title IV SO₂ allowance allocation. Under the CAIR model rule, EPA takes responsibility for establishing CAIR compliance accounts for each CAIR source and maintaining an allowance tracking system to record the deposit, transfer, and deduction for compliance of all CAIR allowances. CAIR sources would be required, under the model rule, to demonstrate compliance through the installation and operation of continuous emissions monitoring systems as required under 40 CFR Part 75. Finally, the model rule requires all elements of the CAIR NO_x Annual Trading Program and CAIR SO₂ Trading Program to be federally enforceable through the issuance of a CAIR permit as a complete and separable portion of the CAIR source's Title V permit.

As directed by HB 2481, the commission is proposing under Chapter 101, Subchapter H, new Division 7 to incorporate 40 CFR Part 96, Subpart AA - Subpart II and Subpart AAA - Subpart III by reference for the purpose of complying with the CAIR. In addition, the commission is proposing specific rules under Subchapter H, Division 7 regarding the methodologies and pro-

cedures for determining each CAIR NO_x source's CAIR NO_x allowance allocation in lieu of the CAIR NO_x allowance allocation methodologies and procedures under 40 CFR Part 96, Subpart EE. The proposed rules would apply to EGUs that are defined as a stationary, fossil fuel-fired boiler or a stationary, fossil fuel-fired combustion turbine serving at any time, since the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe and producing electricity for sale. The proposed rules would also apply to cogeneration units serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatts per hour (MWh), whichever is greater, to any utility power distribution system for sale.

The proposed rules would distribute the NO_x trading budget provided to Texas to each CAIR NO_x unit based on the specific direction provided under HB 2481. A total amount of CAIR NO_x allowances equal to 9.5% of the Texas NO_x trading budget would be set-aside as a special reserve for distribution to new units commencing operation on or after January 1, 2001. The remaining 90.5% of the Texas NO_x trading budget would be distributed to units having commenced operation before January 1, 2001, based on a three-year average of the unit's historical heat input adjusted for the type of fuel burned. In performing the fuel adjustment, a unit's historical heat input would be multiplied by the following: 90% for coal-fired, 50% for natural gas-fired, and 30% for all other fossil fuels. The proposed rules would also incorporate an allocation update beginning with the 2016 control period, and for the control period beginning every five years thereafter. The allocation update would adjust the baseline heat input used in determining the CAIR NO_x allowance allocation for each CAIR NO_x unit. In addition to the Texas NO_x trading budget, the CAIR model trading rule provides an additional pool of allowances available for allocation in the 2009 control period to those CAIR NO_x units achieving early NO_x reductions in 2007 and 2008, or whose compliance with the CAIR NO_x reduction requirements for the 2009 control period would create undue risk to the reliability of electricity supply during the year 2009. This pool of NO_x allowances, the compliance supplement pool, equates to an additional 772 tons for Texas. The proposed rules would specify the requirements for a compliance supplement pool allowance request by CAIR NO_x sources.

The commission is concurrently proposing an additional rule-making to 30 TAC Chapter 122, Federal Operating Permits Program, in this issue of the *Texas Register* to implement HB 2481. The commission is also proposing a CAIR SIP and CAMR state plan.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines.

SUBCHAPTER H, EMISSIONS BANKING AND TRADING

Division 7, Clean Air Interstate Rule

Section 101.501, Applicability

Proposed new §101.501 would state that the requirements of Subchapter H, Division 7 apply to any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine meeting the applicability requirements under 40 CFR Part 96, Subpart AA or Subpart AAA. 40 CFR Part 96, Subpart AA and Subpart AAA define applicable units as stationary, fossil fuel-fired boilers

or combustion turbines serving at any time, since the startup of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale. The referenced applicability also includes cogeneration units serving at any time a generator with a nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

Section 101.502, Clean Air Interstate Rule Trading Program

Proposed new §101.502 would incorporate by reference, with the exception of the requirements specified under Subchapter H, Division 7, the CAIR trading programs for annual NO_x and SO₂ codified under 40 CFR Part 96, Subpart AA - Subpart II and Subpart AAA - Subpart III finalized on May 12, 2005. The proposed section would require owners and operators of sources subject to 40 CFR Part 96, Subpart AA - Subpart II or Subpart AAA - Subpart III to comply with the requirements of those subparts. The proposed new section would also specify that the methodologies and procedures for determining CAIR NO_x allowance allocations in 40 CFR Part 96, Subpart EE are replaced by the requirements of this division.

The requirements of 40 CFR Part 96, Subpart AA - Subpart II relate to the CAIR NO_x Annual Trading Program. Specifically, 40 CFR Part 96, Subpart AA describes the general provisions of the CAIR NO_x Annual Trading Program, including definitions; applicability; an exemption from the permitting, monitoring, and reporting requirements of the program for retired units; and standard procedural requirements of the program. 40 CFR Part 96, Subpart BB outlines the procedures for the authorization of and the responsibilities of the CAIR designated representative and alternate CAIR designated representative for a CAIR NO_x source. The CAIR designated representatives or alternates would represent and, through their representations, actions, inactions, or submissions, legally bind each owner and operator of a CAIR NO_x source in all matters pertaining to the CAIR NO_x Annual Trading Program. 40 CFR Part 96, Subpart CC describes the requirement for each CAIR NO_x source to apply for and obtain a CAIR permit containing all applicable CAIR NO_x Annual Trading Program requirements for each CAIR NO_x unit at the source. The CAIR permit is required to be a complete and separable portion of the CAIR NO_x source's Title V operating permit. 40 CFR Part 96, Subpart EE outlines the methods and procedures for determining CAIR NO_x allowance allocations, including the annual CAIR NO_x trading budgets for each state. The methods and procedures identified in 40 CFR Part 96, Subpart EE are replaced by the requirements of this division. 40 CFR Part 96, Subpart FF describes the CAIR NO_x allowance tracking system, the methods for establishing compliance and general accounts, the recording of CAIR NO_x allowance allocations into a CAIR NO_x source's compliance account, the procedures for deducting allowances for compliance, and the banking of CAIR NO_x allowances. Deductions for compliance would be based on the monitoring and reporting requirements under 40 CFR Part 96, Subpart HH, with "penalty" deductions for exceeding the amount of allowances held in a compliance account being equal to three times the number of tons in excess. 40 CFR Part 96, Subpart GG describes the procedures for the submission and recordation of CAIR NO_x allowance trades. 40 CFR Part 96, Subpart HH provides the requirements for emissions monitoring, initial certification and recertification procedures for monitors, recordkeeping, and reporting.

40 CFR Part 96, Subpart II describes the opt-in provisions for the CAIR NO_x Annual Trading Program. The opt-in provisions would apply to a unit that is not already a CAIR NO_x unit under 40 CFR §96.104 or covered by a retired unit exemption; has or is qualified to have a Title V operating permit; vents all emissions to a stack; and can meet the monitoring, recordkeeping, and reporting requirements of 40 CFR Part 96, Subpart HH. CAIR NO_x opt-in units would be required to apply for and obtain a CAIR permit as prescribed under 40 CFR Part 96, Subpart CC. Units electing to opt-in to the CAIR NO_x Annual Trading Program would be required to monitor and report the NO_x emission rate and heat input of the unit in accordance with the monitoring and reporting requirements of 40 CFR Part 96, Subpart HH for the entire control period prior to the date that the unit elects to enter the CAIR NO_x Annual Trading Program. The baseline heat input and baseline emission rate for each CAIR NO_x opt-in unit would be dependent upon the number of control periods for which the unit has monitored and reported heat input and emission rate data in accordance with 40 CFR Part 96, Subpart HH. If the unit has monitored and reported for only one control period, the baseline heat input and emission rate would be the unit's total heat input and NO_x emission rate for the control period immediately preceding the date that the unit elects to opt-in. For units that have monitored and reported for more than one control period, the baseline heat input and emission rate would be the average of the most recent three-year period. The opt-in provisions of 40 CFR Part 96, Subpart II allow opt-in units to choose from two different allocation methods for receiving an allocation of CAIR NO_x allowances. The general approach allocates CAIR NO_x allowances to opt-in units at 70% of their baseline NO_x emission rate with no additional reductions required after the 2009 control period. An alternative approach allocates CAIR NO_x allowances at the baseline levels for the 2009 - 2014 control periods, but requires deeper reductions starting in 2015. The CAIR NO_x allowance allocation for each control period beginning in 2015, and thereafter, would be based on a NO_x emission rate equal to the lesser of 0.15 lb of NO_x/million British thermal units (MMBtu), the unit's baseline emission rate, or the most stringent state or federal NO_x emission limit applicable for any time during the applicable control period. Owners or operators of units may elect to opt-in to the CAIR NO_x Annual Trading Program without electing to opt-in to the CAIR SO₂ Trading Program and may withdraw from participation in the CAIR NO_x Annual Trading Program after five years of participation.

The requirements of 40 CFR Part 96, Subpart AAA - Subpart III relate to the CAIR SO₂ Trading Program and closely mirror the requirements for the CAIR NO_x Annual Trading Program under 40 CFR Part 96, Subpart AA - Subpart II. An element unique to the CAIR SO₂ Trading Program is the program's interaction and coordination with the Title IV SO₂ Trading Program. Under the CAIR SO₂ Trading Program, states have no discretion in the approach to the allocation of SO₂ allowances because EPA will base the CAIR SO₂ allowance allocations on the SO₂ allocations already provided under the Title IV SO₂ Trading Program. Compliance with the CAIR SO₂ Trading Program is coordinated with the Title IV SO₂ Trading Program through requiring the use of Title IV SO₂ allowances for compliance with the CAIR SO₂ Trading program at increasing ratios. Title IV SO₂ allowances allocated for 2010 - 2014 would be retired for compliance with the CAIR SO₂ Trading Program at a ratio of two allowances per ton of emissions. SO₂ allowances allocated for 2015, and thereafter, would be retired for compliance at a ratio of 2.86 allowances per ton of emissions. Title IV SO₂ allowances allocated for years prior to 2010 may be used for compliance with the CAIR SO₂ Trading

Program at a ratio of one allowance per ton of emissions. SO₂ allowances would be freely transferrable between sources covered by the Title IV SO₂ Trading Program and sources covered by the CAIR SO₂ Trading Program.

40 CFR Part 96, Subpart AAA describes the general provisions of the CAIR SO₂ Trading Program including definitions; applicability; an exemption for retired units; and standard procedural requirements of the program. 40 CFR Part 96, Subpart BBB outlines the procedures for the authorization of and the responsibilities of the CAIR designated representative and alternate CAIR designated representative for a CAIR SO₂ source. 40 CFR Part 96, Subpart CCC describes the requirement for each CAIR SO₂ source to apply for and obtain a CAIR permit containing all applicable CAIR SO₂ Trading Program requirements for each CAIR SO₂ unit at the source. 40 CFR Part 96, Subparts DDD and EEE are reserved. 40 CFR Part 96, Subpart FFF describes the CAIR SO₂ allowance tracking system, establishment of compliance accounts and general accounts, recordation of CAIR SO₂ allowance allocations, procedures for deducting allowances for compliance, and the banking of CAIR SO₂ allowances. Deductions for compliance would be based on the monitoring and reporting requirements under 40 CFR Part 96, Subpart HHH, with "penalty" deductions for exceeding the amount of allowances held in a compliance account being equal to three times the number of tons in excess.

The deduction of SO₂ allowances outlined under 40 CFR Part 96, Subpart FFF for compliance with the CAIR SO₂ Trading Program would be determined in two steps. First, CAIR SO₂ allowances would be deducted at a 1:1 ratio for compliance with the Title IV SO₂ Trading Program. Secondly, any additional deductions for compliance with the CAIR SO₂ Trading Program would be made at the applicable ratio for the vintage year allowance being deducted. For example, a CAIR SO₂ unit emits 100 tons of SO₂ in the 2012 control period. The compliance account for the CAIR SO₂ unit holds 70 vintage 2009 allowances and 60 vintage 2012 allowances. For compliance with the Title IV SO₂ Trading Program, 70 vintage 2009 allowances and 30 vintage 2012 allowances are deducted to cover the 100 tons of emissions, leaving an excess of 30 vintage 2012 allowances. However, for CAIR, the tonnage equivalent for the deduction to comply with the Title IV SO₂ Trading Program is 85 allowances (70 vintage 2009 allowances and 30 vintage 2012 allowances used at a 2:1 ratio). The remaining 30 vintage 2012 allowances not needed for compliance with the Title IV SO₂ Trading Program would be deducted from the compliance account at a 2:1 ratio to make up the 15-ton difference for compliance with the CAIR.

40 CFR Part 96, Subpart GGG describes the procedures for submitting and recording CAIR SO₂ allowance trades. 40 CFR Part 96, Subpart HHH provides the requirements for emissions monitoring, certification and recertification of monitors, record-keeping, and reporting. 40 CFR Part 96, Subpart III describes the opt-in provisions for the CAIR SO₂ Trading Program. The opt-in provisions would apply to an owner or operator of a unit that is not already a CAIR SO₂ unit under 40 CFR §96.204 or covered by a retired unit exemption; has or is qualified to have a Title V operating permit; vents all emissions to a stack; and can meet the monitoring, recordkeeping, and reporting requirements of 40 CFR Part 96, Subpart HHH. Owners or operators of CAIR SO₂ opt-in units would be required to apply for and obtain a CAIR permit as prescribed under 40 CFR Part 96, Subpart CCC. Owners or operators of units electing to opt-in to the CAIR SO₂ Trading Program would be required to monitor and report the SO₂ emission rate and heat input of the unit in accordance

with the monitoring and reporting requirements of 40 CFR Part 96, Subpart HHH for the entire control period prior to the date that the unit elects to enter the CAIR SO₂ Trading Program. The baseline heat input and baseline emission rate for each CAIR SO₂ opt-in unit would be dependent upon the number of control periods for which the unit has monitored and reported heat input and emission rate data in accordance with 40 CFR Part 96, Subpart HHH. If the owners or operators of a unit have monitored and reported for only one control period, the baseline heat input and emission rate would be the unit's total heat input and SO₂ emission rate for the control period immediately preceding the date that the unit elects to opt-in. For owners or operators of units that have monitored and reported for more than one control period, the baseline heat input and emission rate would be the average of the most recent three-year period. The opt-in provisions of 40 CFR Part 96, Subpart III allows owners or operators of opt-in units to choose from two different allocation methods for receiving an allocation of CAIR SO₂ allowances. The general approach would allocate CAIR SO₂ allowances to opt-in units at 70% of their baseline SO₂ emission rate with no additional reductions required after the 2010 control period. An alternative approach would allocate CAIR SO₂ allowances at the baseline levels for the 2010 - 2014 control periods, but require deeper reductions starting in 2015. The CAIR SO₂ allowance allocation for each control period beginning in 2015, and thereafter, would be based on a SO₂ emission rate equal to the lesser of the unit's baseline emission rate multiplied by 10% or the most stringent state or federal SO₂ emission limit applicable for any time during the applicable control period. Owners or operators of units may elect to opt-in to the CAIR SO₂ Trading Program without electing to opt-in to the CAIR NO_x Annual Trading Program and may withdraw from participation in the CAIR SO₂ Trading Program after five years of participation.

Section 101.503, Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget

Proposed new §101.503 would specify that the NO_x trading budget for annual allocations of CAIR NO_x allowances for each control period in 2009 - 2014 and for 2015, and thereafter, would be equivalent to the tons of NO_x emissions listed for Texas in the state trading budget under 40 CFR §96.140. As finalized on May 12, 2005, 40 CFR §96.140 provides Texas with an annual NO_x trading budget of 181,014 tons for each control period in 2009 - 2014, and 150,845 tons for each control period in 2015, and thereafter. The proposed new rule would also reserve an amount of CAIR NO_x allowances equivalent to 9.5% of the Texas NO_x trading budget for allocation to new units. This new unit set-aside would equate to 17,196 tons of CAIR NO_x allowances for each control period in 2009 - 2014, and 14,330 tons of CAIR NO_x allowances for each control period in 2015, and thereafter.

Section 101.504, Timing Requirements for Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations

Proposed new §101.504 outlines the deadlines by which the executive director would submit to EPA the CAIR NO_x allowance allocations for each CAIR NO_x unit subject to this division. The proposed rule would require the executive director to submit to EPA by October 31, 2006, the CAIR NO_x allowance allocations for the 2009 - 2014 control periods, as determined under §101.506(c) for CAIR NO_x units with a historical baseline heat input. Subsequently, the proposed rule would require submittal to EPA of the CAIR NO_x allowance allocations determined under §101.506(c) for the 2015 control period by June 1, 2011, and for the 2016 control period by June 1, 2014. Beginning with the 2017 con-

control period, and for each control period thereafter, the CAIR NO_x allowance allocations determined under §101.506(c) would be submitted to EPA 18 months prior to each applicable control period. For example, the CAIR NO_x allowance allocations determined under §101.506(c) for the 2017 control period would be submitted to EPA by June 1, 2015, 18 months prior to January 1, 2017. The proposed deadline for submittal of the CAIR NO_x allowance allocations for the 2016 control period, and for each control period thereafter, would allow for a minimum lead time of no more than 18 months between recordation of the allocation by EPA and the start of the applicable control period. This lead time would be in conflict with the required minimum lead time of three years provided under 40 CFR §51.123(o)(2)(ii) for states declining the adoption of the allocation provisions under 40 CFR Part 96, Subpart EE. However, the proposed submittal deadline would be consistent with HB 2481, requiring the update of the baseline heat input used in determining the CAIR NO_x allowance allocations for CAIR NO_x units in Texas. HB 2481 states that beginning with the 2016 control period, and for each control period beginning every five years thereafter, the baseline heat input for all affected CAIR NO_x units must be updated to reflect the average of the three highest amounts of the unit's adjusted control period heat input during control periods one through five of the previous seven control periods. For example, the baseline period for determining CAIR NO_x allowance allocations for the 2016 control period would be the average of the unit's three highest amounts of adjusted heat input from the 2009 - 2013 control periods. To meet the required three-year minimum lead time under 40 CFR §51.123(o)(2)(ii), the allocations for the 2016 control period must be submitted no later than January 1, 2013. Therefore, the federal requirement would not allow for the completion of the baseline period mandated under HB 2481. The proposed deadline for submission of CAIR NO_x allowance allocations 18 months in advance of each control period beginning in 2016, and thereafter, would allow for the completion of the mandated baseline period, as well as provide time for the executive director to determine the updated CAIR NO_x allowance allocations and submit the updated allocations to EPA.

Proposed §101.504 would also specify the deadline for submission of CAIR NO_x allowance allocations by the executive director to EPA for allowances distributed from the new unit set-aside. For the 2009 control period, and for each control period thereafter, the CAIR NO_x allowance allocations determined under §101.506(d) and (e) would be submitted to EPA by October 31 of that control period. The proposed new rule also describes the actions that EPA would take should the executive director fail to submit the CAIR NO_x allowance allocations by the proposed deadlines in §101.504(a). Should the CAIR NO_x allowance allocations not be provided to EPA by the applicable deadlines in §101.504(a) for each control period, in accordance with 40 CFR §96.141 EPA will assume that the CAIR NO_x allowance allocations for the applicable control period are the same as for the immediately preceding control period. If the applicable control period is 2015, EPA would assume the CAIR NO_x allowance allocations equal 83% of the allocations for the 2014 control period. For units receiving allocations under §101.506(d) and (e), if the executive director fails to submit the CAIR NO_x allowance allocations by the applicable deadline in §101.504(b), EPA would assume that no CAIR NO_x allowances are to be allocated, for the applicable control period, to any CAIR NO_x unit that would otherwise receive an allocation from the new unit set-aside.

Section 101.506, Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations

Proposed new §101.506 describes the methodology to be used in distributing CAIR NO_x allowances, in tons, for each CAIR NO_x unit subject to this division. For units commencing operation before January 1, 2001, CAIR NO_x allowances would be allocated based on a three-year average historical heat input, in MMBtu, adjusted for the type of fuel burned. For each control period in 2009 - 2015, the baseline heat input for units commencing operation before January 1, 2001, would be the average of the three highest amounts of the unit's historical heat input, adjusted for fuel type, from calendar years 2000 - 2004. Beginning with the 2016 control period, and for the control period beginning every five years thereafter, the baseline heat input for units commencing operation prior to January 1, 2001, would be adjusted to reflect the average of the three highest amounts of the unit's control period heat input, adjusted for fuel type, from control periods one through five of the previous seven control periods. The fuel type adjustment would be performed by multiplying a unit's baseline heat input by the following: 90% for coal-fired, 50% for natural gas-fired, and 30% for all other fossil fuels.

For units commencing operation on or after January 1, 2001, CAIR NO_x allowances would be allocated for each control period in 2009 - 2014 from the new unit set-aside identified under §101.503(b). Beginning with the 2015 control period, units commencing operation on or after January 1, 2001, and operating each calendar year for a period of five or more consecutive years would be eligible to receive their CAIR NO_x allowance allocation from the general NO_x trading budget on a modified output basis. The baseline heat input would be the average of the three highest amounts of the unit's total converted control period heat input from the first five years of operation. Beginning with the 2016 control period, and for the control period beginning every five years thereafter, the baseline heat input would be adjusted to reflect the average of the three highest amounts of the unit's total converted control period heat input from control periods one through five of the previous seven control periods. To calculate a unit's converted control period heat input on a modified output basis, the unit's gross electrical output would be multiplied by a heat rate conversion factor of 7,900 British thermal units per kilowatt-hour (Btu/kWh) for coal-fired units and 6,675 Btu/kWh for natural gas- and oil-fired units. For cogeneration units, the converted heat input would be calculated by converting the available thermal output, in Btu, of useable steam to an equivalent heat input by dividing the thermal output by a general boiler/heat exchanger efficiency of 80%. For combustion turbine cogeneration units, the converted heat input would be calculated by first converting the available thermal output of useable steam from the heat recovery steam generator or heat exchanger to an equivalent heat input by dividing the thermal output by a general boiler/heat exchanger efficiency of 80%. Then the electrical generation from the combustion turbine must be added after conversion to an equivalent heat input by multiplying the electrical output by 3,413 Btu/kWh. The sum will yield the total equivalent heat input for the combustion turbine cogeneration unit.

The proposed allocation methodology would distribute 90.5% of the Texas NO_x trading budget to each CAIR NO_x unit with a baseline heat input determined under §101.506(a), (b)(2) or (3) in proportion to each CAIR NO_x unit's share of baseline heat input to the total baseline heat input for all CAIR NO_x units with a baseline heat input determined under §101.506(a) or (b)(2) or (3). For units that commence operation on or after January 1, 2001, and that have not established a historical baseline heat

input in accordance with §101.506(b)(2) or (3), CAIR NO_x allowances would be allocated from the new unit set-aside beginning with the later of the 2009 control period or the first control period after the control period in which the new unit commences commercial operation. The proposed allocation methodology requires the executive director to distribute CAIR NO_x allowances from the new unit set-aside upon receipt of a request from the CAIR designated representative for the CAIR NO_x unit. Submittal of each request for a CAIR NO_x allowance allocation from the new unit set-aside would be required on or before July 1 of the first control period for which the request is being made and after the date that the CAIR NO_x unit commences commercial operation. CAIR NO_x allowances requested from the new unit set-aside would not be allocated in excess of the new unit's total tons of NO_x emissions reported to EPA for the previous control period. On or after July 1 of each control period, the executive director would review each CAIR NO_x allowance allocation request, determine the sum of all CAIR NO_x allowance allocation requests, and allocate CAIR NO_x allowances from the new unit set-aside for the control period. If the amount of CAIR NO_x allowances in the new unit set-aside is greater than or equal to the sum of all CAIR NO_x allowances requested, then the executive director would allocate the amount of CAIR NO_x allowances requested. If the amount of CAIR NO_x allowances in the new unit set-aside is less than the sum of all CAIR NO_x allowances requested, then the executive director would allocate to each new CAIR NO_x unit an amount of CAIR NO_x allowances in proportion to the amount of CAIR NO_x allowances requested by a CAIR NO_x unit to the total amount of CAIR NO_x allowances requested by all CAIR NO_x units. In the proposed allocation methodology, new units would begin receiving allowances from the set-aside for the control period immediately following the control period in which the new unit commences commercial operation based on the unit's emissions reported for the previous control period. Therefore, a CAIR NO_x source operating a new unit would be required to hold allowances covering the emissions from the new unit for the control period in which the new unit commences commercial operation, but would not receive an allocation for that control period. CAIR NO_x allowance allocations for a new unit in subsequent control periods would continue to be based on the unit's emissions from the previous control period until the unit establishes a baseline in accordance with §101.506(b)(2) or (3). Due to the timing requirements under §101.504 for submittal of CAIR NO_x allowance allocations to EPA, a new unit that has established its baseline under §101.506(b)(2) or (3) would begin receiving a CAIR NO_x allowance allocation from the general NO_x trading budget for the control period beginning two years after completion of the new unit's first five consecutive years of operation. For example, a new unit completes its first five consecutive years of operation at the end of the 2015 control period. The new unit would begin receiving CAIR NO_x allowances from the general NO_x trading budget beginning with the 2018 control period since the CAIR NO_x allowance allocations for the 2016 and 2017 control periods would have been submitted to EPA by June 1, 2014, and June 1, 2015, respectively. All CAIR NO_x allowance allocations under the proposed allocation methodology would be rounded to the nearest whole allowance.

Proposed new §101.506 would allow for the distribution of any unallocated CAIR NO_x allowances remaining in the new unit set-aside for a given control period to CAIR NO_x units with a historical baseline heat input receiving an allocation under §101.506(c). These existing units will each receive an additional allocation proportional to the ratio of its original allocation to the state's existing unit allocation, 90.5% of the Texas NO_x trading budget.

This distribution would be performed by multiplying the amount of unallocated CAIR NO_x allowances remaining in the set-aside by each CAIR NO_x unit's allocation determined under §101.506(c), divided by 90.5% of the Texas NO_x trading budget, and rounded to the nearest whole allowance.

Proposed new §101.506 would also require, for the purposes of determining CAIR NO_x allowance allocations, a CAIR NO_x unit's control period heat input, status as coal-fired or natural gas-fired, and total tons of NO_x emissions during a calendar year to be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to those requirements for the year. If a CAIR NO_x unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year, the unit's control period heat input, status as coal-fired or natural gas-fired, and total tons of NO_x emissions during a calendar year will be based on the best available data reported to the executive director.

Section 101.508, Compliance Supplement Pool

Proposed new §101.508 would outline the requirements for the allocation of additional CAIR NO_x allowances for the 2009 control period from the compliance supplement pool for Texas provided under 40 CFR §96.140. As promulgated on May 12, 2005, 40 CFR §96.140 provides Texas with an additional 772 CAIR NO_x allowances under the compliance supplement pool. The proposed rule would allow the compliance supplement pool allowances to be distributed to those CAIR NO_x units that achieve early NO_x reductions in 2007 and 2008, beyond any applicable state or federal emission limitation during those years. CAIR NO_x units seeking an additional allocation from the compliance supplement pool for early NO_x reductions in 2007 and 2008 would be required to monitor and report the unit's NO_x emission rate and heat input in accordance with the continuous emissions monitoring and reporting requirements under 40 CFR Part 96, Subpart HH for the entire control period in which the early reductions are being generated. The CAIR designated representative would be required to submit to the executive director by July 1, 2009, a request for an allocation of CAIR NO_x allowances from the compliance supplement pool in an amount not to exceed the sum of the CAIR NO_x unit's emission reductions, in tons, during 2007 and 2008, that were not necessary to comply with any state or federal emission limitation applicable during those years.

In addition, the proposed new §101.508 would provide for the allocation of additional CAIR NO_x allowances from the compliance supplement pool for CAIR NO_x units whose compliance with the CAIR NO_x annual trading program in the 2009 control period would create undue risk to the reliability of electricity supply during 2009. The CAIR designated representative would be required to submit to the executive director by July 1, 2009, a request for an allocation of CAIR NO_x allowances from the compliance supplement pool in an amount not to exceed the minimum amount of CAIR NO_x allowances necessary to remove the risk to the reliability of electricity supply. In such requests, the CAIR designated representative would be required to demonstrate that in the absence of the additional allocation to the unit, the unit's compliance with the CAIR NO_x annual trading program during the 2009 control period would create an undue risk to electric reliability during 2009. This demonstration would be required to show that it would not be feasible to obtain a sufficient amount of electricity from other electric generation facilities or obtain a sufficient amount of CAIR NO_x allowances from the compliance supplement pool by making early NO_x reductions in 2007 and 2008.

The executive director would review each request for an additional allocation from the compliance supplement pool and, if approved, allocate CAIR NO_x allowances for the 2009 control period to CAIR NO_x units covered by a request. If the amount of CAIR NO_x allowances in the compliance supplement pool is greater than or equal to the sum of all CAIR NO_x allowances requested, then the executive director would allocate the amount of CAIR NO_x allowances requested. If the amount of CAIR NO_x allowances in the compliance supplement pool is less than the sum of all CAIR NO_x allowances requested, then the executive director would allocate to each CAIR NO_x unit covered under a request an amount of CAIR NO_x allowances in proportion to the amount of CAIR NO_x allowances requested by a CAIR NO_x unit to the total amount of CAIR NO_x allowances requested by all CAIR NO_x units. The proposed rule would require the executive director to determine and submit to EPA by November 30, 2009, the CAIR NO_x allowance allocations from the compliance supplement pool.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed new rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of the administration or enforcement of the proposed new rules. Local governments owning EGUs with a nameplate capacity of more than 25 MWe used to produce electricity for sale may experience adverse fiscal implications as a result of the proposed new rules.

On May 12, 2005, EPA issued the CAIR mandating 28 states in the eastern United States and the District of Columbia to reduce SO₂ and NO_x emissions to assist nonattainment areas in downwind states achieve compliance with the NAAQS for PM_{2.5}. Both SO₂ and NO_x contribute to the formation of particulate matter and ozone. CAIR will be implemented in two phases, and each phase requires a progressive reduction of SO₂ and NO_x emissions. CAIR establishes an emissions budget for SO₂ and NO_x in these states and uses a market-based cap and trade system to achieve emission reductions. Principally, CAIR calls upon the electric power generation industry to achieve these reductions. EPA anticipates that the CAIR and CAMR will create an effective multi-state strategy, the goal of which is to better protect public health and the environment without interfering with the steady flow of affordable energy.

The proposed new rules, as required by HB 2481, implement the CAIR model trading rule for both SO₂ and NO_x and outlines specific methodologies and procedures for determining how the allocation of CAIR NO_x allowances will be done throughout the state. The statewide emission budgets for NO_x and SO₂ are provided in two phases. For NO_x, Phase I runs from 2009 - 2014, and has an annual allowance budget of 181,014 tons. For SO₂, Phase I annual emission budgets of 320,946 tons start in 2010 and end in 2014. Phase II annual emission budgets for NO_x and SO₂ start in 2015, and continue every year thereafter. The Phase II annual emission budget is 150,845 tons for NO_x and 224,662 for SO₂.

EPA assessments of the interstate transport of air pollution and available air pollution control measures indicate that a cost-effective manner to achieve the desired reduction of SO₂ and NO_x emissions can be accomplished by controlling emissions from power plants in the affected region. Staff estimated that there are 400 EGUs statewide that will be affected by the proposed

new rules. Of those 400 EGUs, approximately 48 are owned by local governments and 352 are owned by large businesses.

Local governments owning the 48 EGUs have two options to comply with the emissions limits established by CAIR as implemented by the proposed rules: utilize control technology to reduce emissions; or purchase allowances in order to cover emissions that exceed their allocations. The NO_x cap must be met starting March 1, 2010, and the SO₂ cap must be met by March 1, 2011. The method chosen by each local government to comply with its cap will depend on whether it is more cost efficient to install additional controls or purchase allowances from others.

The cost of reducing emissions with additional controls can vary widely and generally becomes more expensive as higher rates of emission reduction are achieved. In addition to capital equipment costs, municipalities must consider the associated operation and maintenance costs of the additional controls, as well as required monitoring costs. Most units are unlikely to install additional controls until Phase II reductions are required, contributing to some uncertainty about costs.

The cost of purchasing allowances can also vary significantly depending on the supply of and demand for allowances. EPA projects the 2010 allowance price will be approximately \$600 per ton for SO₂ and \$1,200 per ton for NO_x. Allowance costs are projected to increase to \$900 per ton and \$1,500 per ton in 2015, for SO₂ and NO_x, respectively.

If a local government wishes to install additional controls, EPA estimates that additional controls for NO_x in a coal-fired unit may cost as much as \$900 to \$1,500 per ton and \$1,200 to \$2,000 per ton for a gas-fired unit to achieve 80% removal of NO_x. Control costs for SO₂ emissions using dry flue gas desulfurization is approximately \$400 to \$800 per ton and \$400 to \$700 per ton for wet flue gas desulfurization to achieve 90% removal of SO₂.

Regardless of how a municipality chooses to control its emissions, CAIR also requires the municipality to install and operate a continuous emissions monitoring system. Since the Acid Rain Program already requires monitoring, the cost to install and operate a continuous emissions monitoring system may only require software upgrades to an existing system. The cost to upgrade the system software as needed is estimated to be \$6,300. A continuous emissions monitoring system for a new coal-fired unit will cost approximately \$163,000 for capital equipment and \$39,000 for operations and maintenance of the system. A continuous emissions monitoring system for a baseload gas- or oil-fired unit that has not been previously subject to the Acid Rain Program or that is a new unit is estimated to cost \$127,000 for equipment with operations and maintenance of the equipment costing \$26,000. For gas- or oil-fired peaking units, the capital cost for a continuous emissions monitoring system is estimated to be \$21,000.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed new rules will be reduced SO₂ and NO_x emissions and greater protection of human health and the environment.

Staff estimated that there are 400 EGUs statewide that will be affected by the proposed new rules. Of those 400 EGUs, approximately 352 are thought to be owned by large businesses.

Large businesses, like local governments, will have the same options to either purchase allowances for excess emissions or

install additional emission controls. Large businesses will incur monitoring costs associated with continuous emissions monitoring systems. Operations and maintenance costs for continuous emissions monitoring systems or for additional control technologies, if chosen, must also be considered. Large businesses will experience the same costs for allowance purchases, capital equipment purchases, and operations and maintenance costs as those experienced by local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. None of the 400 EGUs that will be affected by the proposed new rules are known to be owned or operated by small or micro-businesses. If there are small or micro-businesses affected by the proposed new rules, they will experience the same costs for capital, maintenance, monitoring, and purchasing allowances as those experienced by local governments and large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed new rules do not adversely affect a local economy in a material way for the first five years that the proposed new rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking meets the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed new rules are an incorporation by reference of the federal CAIR. The CAIR includes EPA-administered emissions trading programs that will be governed by model rules provided in the CAIR, which states may incorporate by reference. The EPA found that Texas is among several states that contribute significantly to nonattainment of the NAAQS for PM_{2.5} in downwind states. The EPA is requiring these upwind states to revise their SIPs to include control measures to reduce emissions of SO₂ and/or NO_x, which are precursors to PM_{2.5} formation. Reducing upwind precursor emissions will assist downwind PM_{2.5} nonattainment areas to achieve the NAAQS in a more equitable, cost-effective manner than if those areas implemented local emissions reductions alone. The EPA has specified the amount of each state's required reductions, but each state has

flexibility to choose the measures by which it achieves them. If states choose to control EGUs, then they must establish a budget or cap for those sources. The CAIR defines the EGU budgets for the affected states if the states choose to control only EGUs or if they choose to control other sources to achieve some or all of their reductions. States may adopt the CAIR NO_x model allowance allocation methodology or choose an alternative method to allocate the state budget of NO_x emissions allowances to sources in the state.

Specifically, the proposed rulemaking would incorporate by reference the CAIR model emissions trading rules located in 40 CFR Part 96, Subpart AA - Subpart II, and Subpart AAA - Subpart III. In addition, the rulemaking proposes an alternative NO_x allowance allocation methodology for Texas CAIR NO_x sources in lieu of the model rule methodology in 40 CFR Part 96, Subpart EE. The proposed rulemaking fulfills the requirements of HB 2481, enacted by the 79th Legislature, to incorporate CAIR by reference; to propose an alternate NO_x allowance allocation methodology; to specify the sources to which the trading program is applicable; to set the timing requirements to report annual unit allocations to EPA; to detail the operation of the compliance supplement pool; to specify that a percentage of the state's annual allocation will be set-aside for new units; and to provide that allowances will be available at no cost.

The incorporation of CAIR will require emission reductions from certain new and existing stationary, fossil fuel-fired electric utility units, including boilers and combustion turbines, and certain cogeneration units that meet specific applicability criteria. The proposed incorporation of the federal rule is intended to protect the environment and to reduce risks to human health and safety from environmental exposure by reducing NO_x and SO₂ emissions from upwind states so that downwind states may reach attainment of the NAAQS for PM_{2.5}. The CAIR includes revisions to the Acid Rain Program regulations under FCAA, Title IV, particularly the regulatory provisions governing the SO₂ cap and trade program. The revisions streamline the operation of the acid rain SO₂ cap and trade program and facilitate its interaction with the CAIR trading program. While the required emissions reductions of these programs are based on controls that are known to be highly cost effective for EGUs, the requirements may have adverse impacts on certain utilities, which could be considered a sector of the economy. The exact cost to each unit cannot be predicted, but significant costs to comply with the emission reductions programs may be expected for at least some units that install or upgrade emission controls or that purchase allowances. While the proposed rulemaking is intended to protect human health and the environment, it may adversely affect in a material way sources in the state that fall under the applicability requirements in the federal rule. Cost and benefits of the CAIR were analyzed by EPA during the federal notice and comment rulemaking for the CAIR. CAIR is a required federal program, and the ability of states to modify its requirements is limited.

The proposed rulemaking would implement requirements of the FCAA. Under 42 United States Code (USC), §7410(a)(2)(D), each SIP must contain adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment of the NAAQS in any other state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and

timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. Additionally, states have further obligations under 42 USC, §7410(a)(2)(D), to address interstate transport of pollutants that contribute significantly to nonattainment in, or interfere with maintenance by, another state. In the CAIR, EPA found that 28 states and the District of Columbia contribute significantly to nonattainment of the PM_{2.5} or eight-hour ozone NAAQS in downwind areas. The EPA is requiring these upwind states to revise their SIPs to include control measures to reduce emissions of SO₂ and/or NO_x with limited flexibility. Adoption of the federal CAIR and participation in its emissions cap and trade approach for annual SO₂ and NO_x emissions to reduce downwind PM_{2.5} is the method the state has chosen to achieve those reductions in a flexible and cost-effective manner.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that pre-

sumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to protect the environment and to reduce risks to human health by adoption of the federal CAIR by reference, and to specify some components of the trading program for which the federal rule allows for flexibility of choice by the state. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Finally, this proposed rulemaking was not developed solely under the general powers of the agency, but is required by the THSC, TCAA, §382.0173. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the proposed rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed rulemaking is to incorporate by reference the federal CAIR emissions trading rules located in 40 CFR Part 96,

Subpart AA - Subpart II and Subpart AAA - Subpart III, and to specify some components of the trading program for which the federal rule allows for flexibility of choice by the state. The 79th Legislature enacted HB 2481, which created a requirement in THSC, TCAA, §382.0173 to adopt the federal CAIR program rules by reference. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). EPA promulgated the CAIR rule to reduce NO_x and SO₂ emissions from upwind states so that downwind states may reach attainment of the NAAQS for PM_{2.5}. The proposed rules will enable Texas to implement the federal emissions budget and trading program and impose its requirements on new and existing fossil fuel-fired electric utility units, ultimately ensuring reductions of NO_x and SO₂ emissions. The action will specifically advance the health and safety purpose by reducing PM_{2.5} levels through an emissions cap and gradual reductions in emissions of NO_x and SO₂. The rules specifically target a category of sources with significant NO_x and SO₂ emissions, and through the cap and trade program support cost-effective control strategies. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed new rules will maintain at least the same level of or increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This proposed rulemaking action complies with 40 CFR Part 51, concerning Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in

accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of 42 USC, §7410 are applicable requirements of 30 TAC Chapter 122. Facilities that are subject to the Federal Operating Permit Program will be required to obtain, revise, re-open, and renew their federal operating permits as appropriate in order to include CAIR.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled in Austin on April 11, 2006, at 2:00 p.m. in Building E, Room 201S at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle; in Fort Worth on April 12, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 2309 Gravel Drive; and in Houston on April 13, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 5425 Polk Street, Suite H, 3rd Floor. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions after each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005- 046-101-EN. Comments must be received by 5:00 p.m., April 17, 2006. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Kim Herndon, Air Quality Planning Section, (512) 239-1421.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to

control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning emission inventory; §382.016, concerning Monitoring Requirements; HB 2481, §2 of the 79th Legislature, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which requires states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, the NAAQS in any other state.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, HB 2481, §2 of the 79th Legislature, to be codified at §382.0173, and §382.054; and FCAA, 42 USC, §§7401 *et seq.*

§101.501. Applicability.

This division applies to any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine meeting the applicability requirements under 40 Code of Federal Regulations Part 96, Subpart AA or Subpart AAA.

§101.502. Clean Air Interstate Rule Trading Program.

(a) The commission incorporates by reference, except as specified in this division, the provisions of 40 Code of Federal Regulations (CFR) Part 96, Subpart AA - Subpart II and Subpart AAA - Subpart III (as amended through May 12, 2005 (70 FR 25162)) for purposes of implementing the Clean Air Interstate Rule trading programs for annual emissions of oxides of nitrogen and sulfur dioxide to meet the requirements of Federal Clean Air Act, §110(a)(2)(D).

(b) Owners and operators of sources subject to 40 CFR Part 96, Subpart AA - Subpart II or Subpart AAA - Subpart III shall comply with those requirements.

(c) The methodologies and procedures for determining and recording each subject source's Clean Air Interstate Rule oxides of nitrogen allowance allocation in 40 CFR Part 96, Subpart EE are replaced by the requirements of this division.

§101.503. Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget.

(a) The oxides of nitrogen (NO_x) trading budget for annual allocations of Clean Air Interstate Rule NO_x allowances for the control periods in 2009 - 2014 and in 2015, and thereafter, shall be equivalent to the tons of NO_x emissions listed for Texas in the state trading budget under 40 Code of Federal Regulations §96.140.

(b) A total amount of Clean Air Interstate Rule NO_x allowances equal to 9.5% of the NO_x trading budget identified under subsection (a) of this section must be set-aside for allocation to new units.

§101.504. Timing Requirements for Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.

(a) The executive director shall submit to the United States Environmental Protection Agency (EPA) the Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowance allocations determined in accordance with §101.506(c) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations) by the following dates:

- (1) October 31, 2006, for the 2009 - 2014 control periods;
- (2) June 1, 2011, for the 2015 control period;
- (3) June 1, 2014, for the 2016 control period; and

(4) 18 months prior to the beginning of each applicable control period for the control period beginning in 2017 and for each control period thereafter.

(b) For the control period beginning in 2009, and for each control period thereafter, the executive director shall submit to EPA the CAIR NO_x allowance allocations determined in accordance with §101.506(d) and (e) of this title by October 31 of the applicable control period.

(c) If the executive director fails to submit to EPA the CAIR NO_x allowance allocations in accordance with subsection (a) of this section, EPA will assume that the allocations of CAIR NO_x allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, EPA will assume that the allocations equal 83% of the allocations for the control period that immediately precedes the applicable control period.

(d) If the executive director fails to submit to EPA the CAIR NO_x allowance allocations in accordance with subsection (b) of this section, EPA will assume that no CAIR NO_x allowances are to be allocated, for the applicable control period, to any CAIR NO_x unit that would otherwise be allocated CAIR NO_x allowances under §101.506(d) and (e) of this title.

§101.506. Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations.

(a) For units commencing operation before January 1, 2001:

(1) for each control period in 2009 - 2015, the baseline heat input, in million British thermal units (MMBtu), is the average of the three highest amounts of the unit's adjusted control period heat input for 2000 - 2004 with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90%;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50%; and

(C) if the unit is not subject to subparagraph (A) or (B) of this paragraph, the unit's control period heat input for such year is multiplied by 30%.

(2) for the control period beginning January 1, 2016, and for the control period beginning every five years thereafter, the baseline heat input must be adjusted to reflect the average of the three highest amounts of the unit's adjusted control period heat input from control periods one through five of the preceding seven control periods with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90%;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50%; and

(C) if the unit is not subject to subparagraph (A) or (B) of this paragraph, the unit's control period heat input for such year is multiplied by 30%.

(b) For units commencing operation on or after January 1, 2001:

(1) for each control period in 2009 - 2014, Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances must be allocated from the new unit set-aside identified under §101.503(b) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget) and determined in accordance with subsection (d) of this section;

(2) for the control period beginning January 1, 2015, and for each control period thereafter, for units operating each calendar year during a period of five or more consecutive years, the baseline heat input is the average of the three highest amounts of the unit's total converted control period heat input over the first such five years. The converted control period heat input for each year is calculated as follows:

(A) except as provided in subparagraph (B) or (C) of this paragraph, the converted control period heat input equals the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 British thermal units per kilowatt-hour (Btu/kWh), if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/MMBtu. If a generator is served by two or more units, then the gross electrical output of the generator must be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) for a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted heat input is the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and converted to MMBtu by dividing by 1,000,000 Btu/MMBtu; or

(C) for a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted heat input is determined using the equation in the following figure.

Figure: 30 TAC §101.506(b)(2)(C)

(3) for the control period beginning January 1, 2016, and for the control period beginning every five years thereafter, for units operating each calendar year during a period of five or more consecutive years, the baseline heat input shall be adjusted to reflect the average of the three highest amounts of the unit's converted control period heat input from control periods one through five of the preceding seven control periods. The converted control period heat input for each year is calculated as follows:

(A) except as provided in subparagraph (B) or (C) of this paragraph, the converted control period heat input equals the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by two or more units, then the gross electrical output of the generator must be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) for a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted control period heat input equals the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and converted to MMBtu by dividing by 1,000,000 Btu/MMBtu; or

(C) for a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the converted control period heat input is determined using the equation in the following figure.

Figure: 30 TAC §101.506(b)(3)(C)

(c) For units with a baseline heat input calculated under subsection (a) or (b)(2) or (3) of this section, CAIR NO_x allowances must be allocated according to the equation in the following figure.

Figure: 30 TAC §101.506(c)

(d) For units commencing operation on or after January 1, 2001, and that have not established a baseline heat input in accordance with subsection (b)(2) or (3) of this section, CAIR NO_x allowances must be allocated according to the following.

(1) Beginning with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under subsection (c) of this section, CAIR NO_x allowances must be allocated from the new unit set-aside identified under §101.503(b) of this title. For the first control period in which a CAIR NO_x unit commences commercial operation, such CAIR NO_x unit will not receive a CAIR NO_x allocation from the new unit set-aside.

(2) To receive a CAIR NO_x allowance allocation from the new unit set-aside, the CAIR designated representative shall submit to the executive director a written request on or before July 1 of the first control period for which the CAIR NO_x allowance allocation is requested and after the date that the CAIR NO_x unit commences commercial operation.

(3) In a CAIR NO_x allowance allocation request under paragraph (2) of this subsection, the amount of CAIR NO_x allowances requested for a control period must not exceed the CAIR NO_x unit's total tons of NO_x emissions reported to EPA for the calendar year immediately preceding such control period.

(4) The executive director shall review each CAIR NO_x allowance allocation request submitted in accordance with this subsection and shall allocate CAIR NO_x allowances for each control period as follows.

(A) The executive director shall accept a CAIR NO_x allowance allocation request only if the request meets, or is adjusted as necessary to meet, the requirements of this subsection.

(B) On or after July 1 of the control period, the executive director shall determine the sum of all accepted CAIR NO_x allowance allocation requests for the control period.

(C) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under subparagraph (B) of this paragraph, then the executive director shall allocate the full amount of CAIR NO_x allowances requested to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request that was accepted by the executive director.

(D) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under subparagraph (B) of this paragraph, then the executive director shall allocate CAIR NO_x allowances to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director according to the equation in the following figure.

Figure: 30 TAC §101.506(d)(4)(D)

(E) The executive director shall notify each CAIR designated representative who submitted a CAIR NO_x allowance allocation request.

tion request of the amount of CAIR NO_x allowances, if any, allocated for the control period to the CAIR NO_x unit covered under the request.

(e) If, after completion of the procedures under subsection (d) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the executive director shall allocate to each CAIR NO_x unit receiving an allocation under subsection (c) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under subsection (c) of this section, divided by 90.5% of the NO_x trading budget identified in subsection (a) of this section, and rounded to the nearest whole allowance as appropriate.

(f) A unit's control period heat input, and a unit's status as coal-fired or natural gas-fired, for a calendar year under subsection (a) of this section, and a unit's total tons of NO_x emissions during a calendar year under subsection (d) of this section, must be determined in accordance with 40 Code of Federal Regulations (CFR) Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or must be based on the best available data reported to the executive director for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

§101.508. Compliance Supplement Pool.

(a) In addition to the Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances allocated under §101.506 of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Allowance Allocations), the executive director may allocate for the control period in 2009 up to the amount of CAIR NO_x allowances listed as the compliance supplement pool for Texas under 40 Code of Federal Regulations (CFR) §96.140.

(b) For any CAIR NO_x unit that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits and allocation of CAIR NO_x allowances from the compliance supplement pool under subsection (a) of this section for such early reduction credits, in accordance with the following.

(1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 40 CFR Part 96, Subpart HH for the entire control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the executive director by July 1, 2009, a written request for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts, in tons, of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with 40 CFR Part 96, Subpart HH.

(c) For any CAIR NO_x unit whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under subsection (a) of this section, in accordance with the following.

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the executive director by July 1, 2009, a written request for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of

CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under subsection (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(A) obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(B) obtain under subsections (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The executive director shall review each request under subsections (b) or (c) of this section submitted by July 1, 2009, and shall allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units covered by such request as follows.

(1) The executive director shall make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subsections (b) or (c) of this section.

(2) If the total amount of CAIR NO_x allowances in all requests, as adjusted under paragraph (1) of this subsection, is less than the amount of allowances in the compliance supplement pool under subsection (a) of this section, the executive director shall allocate to each CAIR NO_x unit covered by a request the amount of CAIR NO_x allowances requested, as adjusted under paragraph (1) of this subsection.

(3) If the total amount of CAIR NO_x allowances in all requests, as adjusted under paragraph (1) of this subsection, is more than the amount of allowances in the compliance supplement pool under subsection (a) of this section, the executive director shall allocate CAIR NO_x allowances to each CAIR NO_x unit covered by a request according to the equation in the following figure.
Figure: 30 TAC §101.508(d)(3)

(4) By November 30, 2009, the executive director shall determine, and submit to EPA, the allocations under paragraph (2) or (3) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601385

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



DIVISION 8. CLEAN AIR MERCURY RULE

30 TAC §101.601, §101.602

The Texas Commission on Environmental Quality (commission) proposes new §101.601 and §101.602. The new sections will be submitted to the United States Environmental Protection Agency (EPA) as part of the Texas State Plan for the Control of Designated Facilities and Pollutants.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On May 18, 2005, EPA finalized the clean air mercury rule (CAMR) to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units (EGUs) nationwide. The mercury reduction requirements under CAMR will be implemented in two phases by providing states with declining budgets. Phase I begins in 2010 and continues through the year 2017. During those years Texas will receive an annual mercury budget of 4.657 tons. The Phase II mercury budget will begin in 2018 and Texas will receive an annual budget of 1.838 tons that year and each year thereafter. EPA provided states with two compliance options for meeting the reduction requirements under CAMR: 1) meet the state's emission budget by requiring new and existing coal-fired EGUs to participate in an EPA-administered cap and trade system; or 2) meet an individual state emissions budget through measures of the state's choosing. During the 79th Legislature, 2005, the legislature enacted House Bill 2481 requiring Texas to participate in the EPA-administered interstate cap and trade program through the incorporation by reference of the CAMR model trading rule.

House Bill 2481 amended Texas Health and Safety Code (THSC), Chapter 382 by adding 382.0173. THSC, §382.0173(a) requires that the commission adopt rules "incorporat[ing] by reference 40 CFR Subparts AA through II and Subparts AAA through III of Part 96 and 40 CFR Subpart HHHH of Part 60." Additionally, THSC, §382.0173(b) requires the commission to "make permanent allocations that are reflective of the allocation requirements of 40 CFR Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 CFR Subpart HHHH of Part 60 . . . at no cost . . . using the {EPA's} allocation method as specified by Section 60.4142(a)(1)(i), as issued by that agency on May 12, 2005, or 40 CFR Section 96.142(a)(1)(i), as issued by that agency on May 18, 2005, as applicable with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c)." THSC, §382.0173(c) provides additional requirements regarding nitrogen oxides allocations, specifically a requirement to maintain a special reserve of allocations for certain units, and requirements relating to establishing allocations for specific control periods. THSC, §382.0173(d) provided that its provisions applied only while the federal rules were enforceable and that the provisions of House Bill 2481 do "not limit the authority of the commission to implement more stringent emissions control requirements."

The commission interprets these requirements together in order to provide effect to the expressed intent of the legislature. Specifically, the commission interprets the language of new THSC, §382.0173(d) as not restricting existing authority to require further emissions control requirements, but not to interfere with, or change, the requirements of the Clean Air Interstate Rule (CAIR) nitrogen oxides and sulfur dioxide, or the CAMR mercury emission trading programs. The legislature expressed clear intent that the commission implement the CAIR and CAMR emission trading programs by requiring the incorporation by reference of the CAIR and CAMR program rules as promulgated by EPA, and requiring the use of EPA specified allocation methodology, with some exceptions for CAIR nitrogen oxides allowances.

The CAMR model trading rule, under 40 Code of Federal Regulations (CFR) Part 60, Subpart HHHH, is a market-based cap and trade system designed to reduce the costs of complying with the new mercury reduction requirements. The Mercury Budget Trading Program caps nationwide annual mercury emissions by providing each state with an annual emissions budget to be applied to all coal-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25 megawatts of electricity (MWe) and producing electricity for sale. The trading rule provides flexibility in complying with the mercury reduction requirements through unrestricted banking of excess allowances and the trading of allowances between EGUs nationwide. States participating in the interstate trading program therefore are not subject to individual state caps. Under the model rule, states are provided flexibility in the allocation methodology used to determine mercury allowance allocations for each mercury budget unit. States are then responsible for submitting the allowance allocations to EPA for recordation. Under the CAMR model rule, EPA would establish mercury compliance accounts for each mercury budget source and maintain an allowance tracking system to record the deposit, transfer, and deduction for compliance of all mercury allowances. The mercury budget sources would be required, under the model rule, to demonstrate compliance through the installation and operation of continuous emissions monitoring systems as required under 40 CFR Part 75. Finally, the model rule requires all elements of the Mercury Budget Trading Program to be federally enforceable through the issuance of a mercury budget permit as a complete and separable portion of each mercury budget source's Title V permit.

As directed by House Bill 2481, §2 (to be codified in THSC, §382.0173), the commission is proposing under Subchapter H, new Division 8 of Chapter 101 to incorporate 40 CFR Part 60, Subpart HHHH, by reference for the purpose of complying with the CAMR.

SECTION BY SECTION DISCUSSION

Section 101.601, Applicability

The proposed new §101.601 states that the requirements of Chapter 101, Subchapter H, Division 8, apply to any stationary, coal-fired boiler or stationary, coal-fired combustion turbine meeting the applicability requirements under 40 CFR §60.4104. The referenced applicability requirements under 40 CFR §60.4104 apply to stationary, coal-fired boilers or combustion turbines serving at any time, since the startup of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe producing electricity for sale. The referenced applicability requirements also include cogeneration units serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hour (MWh), whichever is greater, to any utility power distribution system for sale.

Section 101.602, Clean Air Mercury Rule Trading Program

The proposed new §101.602 would incorporate by reference the CAMR trading program for mercury codified under 40 CFR Part 60, Subpart HHHH, finalized on May 18, 2005. The proposed section would require owners and operators of sources subject to 40 CFR Part 60, Subpart HHHH, to comply with the requirements of that subpart.

The requirements of 40 CFR Part 60, Subpart HHHH, establish the Mercury Budget Trading Program of the CAMR. Specifically,

the rules under Subpart HHHH outline a model cap and trade program that may be adopted by states to comply with CAMR. The rules provide for the applicability of the Mercury Budget Trading Program to stationary, coal-fired boilers and combustion turbines serving a generator with a nameplate capacity greater than 25 MWe producing electricity for sale. The Mercury Budget Trading Program provides for an exemption from the program's permitting, monitoring, and reporting requirements for retired units. Retired units would continue to receive mercury allowance allocations. The model trading rule outlines standard requirements for each mercury budget source and mercury budget unit, including the requirements to obtain a mercury budget permit; comply with the monitoring, reporting, and recordkeeping requirements of 40 CFR §§60.4170 - 60.4176; and hold mercury allowances not less than the amount of total mercury emissions for each control period, January 1 through December 31 of each calendar year. The requirements under 40 CFR §§60.4110 - 60.4114 describe the procedures for the authorization of a mercury designated representative, the representative's responsibilities, and the responsibilities of both the mercury designated representative and alternate mercury designated representative for a mercury budget source. The mercury designated representative or alternate would represent and, through its representations, actions, inactions, or submissions, legally bind each owner and operator of a mercury budget source in all matters pertaining to the Mercury Budget Trading Program. For each mercury budget source required to have a Title V operating permit, 40 CFR §§60.4120 - 60.4124 describe the requirements for each mercury budget source to apply for and obtain a mercury budget permit containing all applicable Mercury Budget Trading Program requirements for each mercury budget unit at the source.

State trading budgets and the methodology and procedures for allocating mercury allowances are provided under 40 CFR §§60.4140 - 60.4142. State budgets are provided in two phases, with Phase I beginning in 2010 and continuing through the year 2017. In each Phase I year, Texas will receive a mercury budget of 4.657 tons. The Phase II mercury budget will begin in 2018, with Texas receiving 1.838 tons in 2018 and each year thereafter. Mercury allowance allocations, in ounces, would be distributed to each mercury budget unit in accordance with the methodology outlined under 40 CFR §60.4142. For units commencing operation before January 1, 2001, mercury allowances would be allocated based on the average of the three highest amounts of heat input, in million British thermal units (mmBtu), from calendar years 2000 through 2004 adjusted for the type of coal burned. The coal type adjustment would be performed by multiplying the respective portion of the unit's baseline heat input for the year by the following: 3.0 for lignite, 1.25 for sub-bituminous, and 1.0 for all other coal types. Units commencing operation on or after January 1, 2001, and operating each calendar year for a period of five or more consecutive years would no longer be eligible for an allocation from the new unit set-aside and would receive their mercury allowance allocation from the general mercury trading budget on a modified output basis. The baseline heat input would be the average of the three highest amounts of the unit's total converted control period heat input from the first five years of operation. In calculating a unit's converted control period heat input on a modified output basis, the unit's gross electrical output would be multiplied by a heat rate conversion factor of 7,900 British thermal units per kilowatt-hour (Btu/kWh). For cogeneration units, the converted heat input would be calculated by converting the available thermal output, in Btu, of useable steam to an equivalent heat input by dividing the thermal output by a general boiler/heat exchanger

efficiency of 80%. For combustion turbine cogeneration units, the converted heat input would be calculated by converting the available thermal output of useable steam from the heat recovery steam generator or heat exchanger to an equivalent heat input by dividing the thermal output by a general boiler/heat exchanger efficiency of 80%. To this, the electrical generation from the combustion turbine would be added after conversion to an equivalent heat input by multiplying the electrical output by 3,413 Btu/kWh. The sum would yield the total equivalent heat input for the combustion turbine cogeneration unit.

The model rule provides for each state to set aside a portion of its annual allowance allocation for units newly beginning operation. The model rule allocation methodology allocates a total amount of mercury allowances for the 2010 through 2014 control periods equal to 95% of the Texas mercury trading budget to each mercury budget unit with a baseline heat input determined under 40 CFR §60.4142(a). The allocation will be made in proportion to each mercury budget unit's share of baseline heat input compared to the total baseline heat input for all mercury budget units with a baseline heat input determined under 40 CFR §60.4142(a). Beginning with the 2015 control period, and for each control period thereafter, a total amount of mercury allowances equal to 97% of the mercury trading budget would be allocated to each mercury budget unit with a baseline heat input determined under 40 CFR §60.4142(a) in proportion to each mercury budget unit's share of baseline heat input compared to the total baseline heat input for all mercury budget units with a baseline heat input determined under 40 CFR §60.4142(a).

The model allocation methodology would require the executive director to distribute mercury allowances from the new unit set-aside upon receipt of a request from the mercury budget designated representative for the mercury budget unit. Submittal of each request for a mercury allowance allocation from the new unit set-aside would be required on or before July 1 of the first control period for which the request is being made and after the date on which the mercury budget unit commences commercial operation. Mercury allowances requested from the new unit set-aside would not be allocated in excess of the new unit's total tons of mercury emissions reported to EPA for the previous control period. On or after July 1 of each control period, the executive director would review each mercury allowance allocation request, determine the sum of all such requests, and allocate mercury allowances from the new unit set-aside for the control period. If the amount of mercury allowances in the new unit set-aside is greater than or equal to the sum of all allowances requested, then the executive director would allocate the amount of mercury allowances requested. If the amount of mercury allowances in the new unit set-aside is less than the sum of all allowances requested, then the executive director would allocate to each mercury budget unit covered under a request an amount of allowances in proportion to the amount of allowances requested by a mercury budget unit compared to the total amount of allowances requested by all mercury budget units. In the proposed allocation methodology, new units would begin receiving allowances from the set-aside for the control period immediately following the control period in which the new unit commences commercial operation, based on the unit's emissions reported for the previous control period. Therefore, a mercury budget source operating a new unit would be required to hold allowances covering the emissions from the new unit for the control period in which the new unit commences commercial operation, but would not receive an allocation for that control period. Mercury allowance allocations for a new unit in subsequent control peri-

ods would continue to be based on the unit's emissions from the previous control period until the unit establishes a baseline in accordance with 40 CFR §60.4142(a)(1)(ii). All mercury allowance allocations under the proposed allocation methodology would be rounded to the nearest whole allowance.

The model rule allows for the distribution of any unallocated mercury allowances remaining in the new unit set-aside for a given control period to mercury budget units with a historical baseline heat input receiving an allocation under 40 CFR §60.4142(b). This distribution would be performed by multiplying the amount of unallocated allowances remaining in the set-aside by each mercury budget unit's allocation determined under 40 CFR §60.4142(b), divided by 95% of the Texas mercury trading budget for 2010 to 2014, and divided by 97% for 2015 and thereafter.

The model rule would also require, for the purposes of determining allowance allocations, a mercury budget unit's control period heat input and total ounces of mercury emissions during each calendar year to be determined in accordance with the continuous emission monitoring requirements of 40 CFR Part 75 to the extent that the unit was otherwise subject to those requirements for the year. If a mercury budget unit commencing operation before January 1, 2001, was not otherwise subject to the requirements of 40 CFR Part 75 for any given year, the unit's control period heat input, status as coal-fired or natural gas-fired, and total ounces of mercury emissions during a calendar year will be based on the best available data reported to the executive director. The types and amounts of fuel combusted by such a mercury budget unit will also be based on the best available data reported to the executive director.

The model trading rule would require the executive director to submit to EPA by October 31, 2006, the mercury allowance allocations for the 2010 through 2014 control periods for mercury budget units with a historical baseline heat input determined under 40 CFR §60.4142(a). Subsequently, by October 31, 2008, and October 31 of each year thereafter, the model rule would require submittal to EPA of the mercury allowance allocations for mercury budget units with a historical baseline heat input determined under 40 CFR §60.4142(a) for the control period beginning in the sixth year after the year of the applicable submittal deadline. For example, the mercury allowance allocations determined under 40 CFR §60.4142(a) for the 2015 control period would be submitted to EPA by October 31, 2008. The model rule also describes the actions EPA would take should the executive director fail to submit the mercury allowance allocations by the applicable deadlines. If the mercury allowance allocations are not provided to EPA by the applicable deadlines in 40 CFR §60.4141(b)(1) for each control period, EPA would assume the mercury allowance allocations for the applicable control period are the same as for the immediately preceding control period. If the applicable control period for which the allowance allocation is not submitted is 2018, EPA would assume the mercury allowance allocations equal the allocations for the 2017 control period multiplied by the state trading budget for Phase II and divided by the state trading budget for Phase I. Finally, by October 31, 2010, and October 31 of each year thereafter, the executive director would be required to submit to EPA the mercury allowance allocations distributed from the new unit set-aside under 40 CFR §60.4142(c) and (d) for that control period. If the executive director fails to submit the allowance allocations by the applicable deadline in 40 CFR §60.4141(c)(1) for each control period, EPA would assume that no allowances are to be allocated for the

applicable control period to any mercury budget unit that would otherwise receive an allocation from the new unit set-aside.

The mercury allowance tracking system; methods for establishing compliance accounts and general accounts; the recording of mercury allowance allocations into a mercury budget source's compliance account; the procedures for deducting allowances for compliance; and the banking of mercury allowances are outlined under 40 CFR §§60.4151 - 60.4157. The Mercury Budget Trading Program would allow for the unlimited banking of excess allowances. Deductions for compliance would be based on the monitoring and reporting requirements under 40 CFR §60.4154 with "penalty" deductions for emissions in excess of the amount of allowances held in a compliance account being equal to three times the number of ounces emitted in excess. The procedures for the submission and recordation of mercury allowance trades are outlined under 40 CFR §§60.4160 - 60.4162. The model rule, under 40 CFR §§60.4170 - 60.4176, requires mercury budget units to meet the continuous emissions monitoring requirements under 40 CFR Part 75 and outlines the initial certification and recertification procedures for monitoring systems, as well as the applicable recordkeeping and reporting requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst for the Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. Local governments owning coal-fired EGUs with a nameplate capacity of more than 25 MWe used to produce electricity for sale may experience adverse fiscal implications as a result of the proposed rules.

On March 15, 2005, EPA issued the CAMR, the first federally mandated reduction of mercury emissions on coal-fired power plants. CAMR establishes a market-based cap and trade system to achieve mercury emission reductions. The CAIR, issued by EPA on March 10, 2005, aims to reduce air pollution that moves across state boundaries. EPA anticipates that CAIR and CAMR will create an effective multi-pollutant strategy, the goal of which is to better protect public health and the environment without interfering with the steady flow of affordable energy. Many of the same strategies used to reduce sulfur dioxide and nitrogen oxides will also reduce mercury emissions. As a result of emission reductions mandated under CAIR, mercury emissions will also decrease.

The proposed rules, as required by House Bill 2481, implement the CAMR model trading rule for mercury by incorporating the federal requirements by reference. The statewide emissions budget for mercury is provided in two phases. Phase I, which runs from 2010 to 2017, allows Texas an annual allowance budget of 4.657 tons of mercury. Phase II, starting in 2018 and continuing every year thereafter, declines to an annual allowance budget of 1.838 tons for Texas sources.

Staff estimated that there are 36 EGUs statewide that will be affected by the proposed rules. Of those 36 EGUs, approximately four are owned by local governments and 32 are owned by large businesses.

Local governments owning the four EGUs have two options to comply with the emissions limits established by CAMR as implemented by the proposed rules: utilize control technology to reduce emissions or purchase allowances in order to cover emis-

sions that exceed their allocations. The method chosen by each local government to comply with its cap will depend on whether it is more cost efficient to install additional controls or purchase allowances from others.

The cost of reducing emissions with additional controls can vary widely and generally becomes more expensive as higher rates of emission reduction are achieved. In addition to the cost of allowances and capital equipment costs, municipalities must consider the associated operations and maintenance costs of the additional controls, as well as required monitoring costs. CAIR Phase I reductions are relied on to reduce mercury emissions to Phase I levels of acceptable mercury emissions under CAMR. Most units are unlikely to install additional controls until Phase II reductions are required, contributing to some uncertainty about costs.

The cost of purchasing allowances can also vary significantly depending on the supply of and demand for allowances. EPA projects the 2010 allowance price will be approximately \$1,500 per ounce. Allowance costs are projected to increase to \$2,400 per ounce by 2020.

If a local government wishes to install additional controls, EPA estimates that additional controls for sulfur dioxide and mercury emissions using flue gas desulfurization will cost approximately \$400 to \$800 per ton to achieve 30% to 40% removal of mercury.

To meet Phase II budgets for mercury emissions, emerging technologies, such as sorbent injection of powdered activated carbon may be needed. The cost of this newer technology is relatively unknown since such controls are under development.

Regardless of how a local government chooses to control its emissions, CAMR also requires the local government to monitor mercury emissions utilizing a continuous emissions monitoring system or sorbent trap monitor. A continuous emissions monitoring system for a new coal-fired unit will cost approximately \$95,000 to \$135,000 for capital equipment and \$45,000 to \$65,000 for operation and maintenance of the system. Sorbent trap monitors may cost as much as \$18,000 for capital equipment with annual operating, maintenance, and laboratory costs ranging from \$65,000 to \$125,000. The costs for each unit will depend in part on what systems are already installed or planned that can be modified or expanded to include mercury emissions monitoring.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be reduced mercury emissions and greater protection of human health and the environment.

Staff estimated that there are 36 EGUs statewide that will be affected by the proposed rules. Of those 36 EGUs, approximately 32 are thought to be owned by large businesses.

Large businesses, like local governments, will have the same options to either purchase allowances for excess emissions or install additional emission controls. Large businesses will incur monitoring costs associated with continuous emissions monitoring systems or sorbent trap monitors. Operation and maintenance costs for monitoring systems or for additional control technologies, if chosen, must also be considered. Large businesses will experience the same costs for allowance purchases, capital equipments purchases, and operations and maintenance costs as those experienced by local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. None of the 36 EGUs that will be affected by the proposed rules are known to be owned or operated by small or micro-businesses. If there are small or micro-businesses affected by the proposed rules, they will experience the same costs for capital, maintenance, monitoring, and purchasing allowances as those experienced by local governments and large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking meets the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking would incorporate by reference the federal CAMR emissions trading rules located in 40 CFR Part 60, Subpart HHHH. 42 United States Code (USC), §7411 creates a system for the establishment of standards of performance to reduce emissions from stationary sources. The CAMR establishes standards of performance for mercury emissions from new and existing coal-fired EGUs. 40 CFR Part 60, Subpart HHHH, creates a trading program for EGUs that will provide a mechanism to meet the mercury standards by capping and then reducing emissions over time. Facilities will demonstrate compliance with the standard by holding one allowance for each ounce of mercury emitted each year. EPA has determined that the cap and trade approach to limiting mercury emissions is the most cost-effective way to achieve reductions. However, states may elect not to participate in the trading program and adopt other strategies to meet their state budgets, which would function as caps in those states. If states choose to participate in the cap and trade program, as has Texas, they must adopt the model rule. The model rule provides an example allowance allocation methodology, which Texas proposes to adopt. The CAMR is designed to achieve initial mercury reductions through implementation of the federal CAIR. The CAIR also imposes cap and trade programs on EGUs that will reduce emissions of sulfur dioxide and oxides

of nitrogen. Emission controls installed to comply with CAIR will achieve mercury reductions as a co-benefit during the first phase of the mercury trading program.

This proposed rulemaking fulfills the requirements of House Bill 2481 to incorporate CAMR by reference and to specify the sources to which the trading program is applicable. The incorporation of CAMR will require emission reductions from certain new and existing stationary coal-fired electric utility units, including boilers and combustion turbines, and certain cogeneration units that meet specific applicability criteria. The proposed incorporation of the federal rule is intended to protect the environment and to reduce risks to human health and safety from environmental exposure to mercury. The required emissions reductions are based on controls that are known to be highly cost-effective for EGUs, but the requirements may have adverse impacts on certain utilities, which could be considered a sector of the economy. The exact cost for each unit cannot be predicted, but significant costs to comply with the emission reduction requirements may be expected for at least some units that install or upgrade emission controls or that purchase allowances. The proposed rulemaking may adversely affect in a material way sources in the state that fall under the applicability requirements in the federal rule. The cost and benefits of the CAMR were analyzed by EPA during the federal notice and comment rulemaking for the CAMR. CAMR is a required federal standard, and the ability of states to modify its requirements is limited.

The proposed rulemaking would implement requirements of the Federal Clean Air Act (FCAA). Under 42 USC, §7411(b)(1)(A), EPA must establish a list of stationary source categories that it has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 USC, §7411(b)(1)(B), then requires EPA to set national standards of performance for new sources within each listed source category. Standards of performance for existing sources of pollutants in the same source categories must then be issued. Under 42 USC, §7411(d), EPA is authorized to promulgate standards of performance that states must adopt through a state implementation plan (SIP)-like process, which requires state rulemaking action followed by review and approval by EPA under 40 CFR Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

Under 42 USC, §7411, states such as Texas that have been delegated the authority to enforce the FCAA must enforce performance standards for new and existing sources of mercury emissions. New sources must comply with Standards of Performance for New Stationary Sources (NSPS) for mercury, as promulgated in the CAMR. In addition, new sources will be covered under the mercury cap of the trading program, and will be required to hold allowances equal to their emissions. For existing sources, 42 USC, §7411, requires EPA to "prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title (SIPs) under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant . . . to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance." While 42 USC, §7411, like §7410 (SIPs), does not require specific programs, methods, or reductions in order to meet the standard, state plans must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, mar-

ketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet emission standards. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for meeting the standards. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7411. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7411, and must develop strategies to assure that the emission standards for new and existing sources are met. Adoption of the federal rule and participation in its emissions cap and trade approach for mercury emissions is the method the state has chosen to achieve those reductions in a flexible and cost-effective manner.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill 633 during the 75th legislative session. The intent of Senate Bill 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for Senate Bill 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet emission standards; thus, states must develop strategies to help ensure that those standards for new and existing sources are met. Because of the ongoing need to address both national ambient air quality standards for criteria pollutants and NSPS and existing source standards for designated pollutants, the commission routinely proposes and adopts SIP rules and 42 USC, §7411 rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP or the 42 USC, §7411 plans was considered to be a major environmental rule that exceeds federal law, then every SIP rule and 42 USC, §7411 rule would require the full regulatory impact analysis contemplated by Senate Bill 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of Senate Bill 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the 42 USC, §7411 rules will have a broad impact, that impact is no greater than is neces-

sary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted to implement and enforce the federal standards of performance and 42 USC, §7411 state plan fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).)

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." (Texas Government Code, §2001.035.) The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rules is to adopt and incorporate by reference the federal CAMR emissions trading rules, with the objective to protect the environment and to reduce risks to human health. The proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in THSC, §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because, although the proposed rules meet the definition of a "major environmental rule," they do not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed rulemaking is to incorporate by reference the federal CAMR emissions trading rules, located in 40 CFR Part 60, Subpart HHHH. Subpart HHHH establishes a mercury emissions cap and trade program for new and existing coal-fired EGUs, for which standards of performance have been promulgated under 42 USC, §7411. During the 79th Legislature, 2005, the legislature enacted House Bill 2481, which created a require-

ment in the Texas Clean Air Act, codified in THSC, §382.0173, to adopt the federal program rules by reference. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). EPA promulgated federal standards of performance for mercury emissions to reduce presently uncontrolled emissions of mercury. The proposed rules will enable Texas to implement the federal cap and trade program and impose its requirements on new and existing EGUs, ultimately ensuring reductions of mercury emissions into the environment. The action will specifically advance the health and safety purpose by reducing mercury levels through an emissions cap and gradual reductions in emissions. The rules specifically target a category of sources with significant mercury emissions, and through the cap and trade program support cost-effective control strategies. Consequently, the proposed rules meet the exemption criteria in Texas Government Code, §2007.003(b)(13). This rulemaking therefore meets the exemptions in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Chapter 2007 does not apply to this proposed rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed rules will maintain at least the same level of or increase the level of emissions control. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 60, Standards of Performance for New Stationary Sources. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of 42 USC, §7410, are applicable requirements of 30 TAC Chapter 122. Facilities that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their federal operating permits as appropriate in order to include CAMR.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled in Austin on April 11, 2006, at 2:00 p.m. in Building E, Room 201S at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle; in Fort Worth on April 12, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 2309 Gravel Drive; and in Houston on April 13, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 5425 Polk Street, Suite H, 3rd Floor. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions after each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Joyce Spencer, Office of Legal Services at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-047-101-EN. Comments must be received by 5:00 p.m., April 17, 2006. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Kim Herndon, Air Quality Planning Section, (512) 239-1421.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory; §382.016, concerning Mon-

itoring Requirements; House Bill 2481, §2, to be codified in §382.0173, concerning Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; §382.054, concerning Federal Operating Permit; and FCAA, 42 USC, §§7401 *et seq.*, which requires states to submit plans establishing standards of performance for existing sources of pollutants for which national ambient air quality standards have not been established, and providing for the implementation and enforcement of such standards of performance.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0173, 382.054, and FCAA, 42 USC, §§7401 *et seq.*

§101.601. Applicability.

This division applies to all stationary, coal-fired boilers and stationary, coal-fired combustion turbines meeting the applicability requirements under 40 Code of Federal Regulations §60.4104.

§101.602. Clean Air Mercury Rule Trading Program.

(a) The commission adopts and incorporates by reference, except as specified in this division, the provisions of 40 Code of Federal Regulations (CFR) Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, as adopted May 18, 2005 (70 FR 28606), for purposes of implementing the clean air mercury rule (CAMR) trading program for mercury to meet the requirements of Federal Clean Air Act, §111.

(b) Owners and operators of sources subject to 40 CFR Part 60, Subpart HHHH, shall comply with those requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601382

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-5017



CHAPTER 122. FEDERAL OPERATING PERMITS PROGRAM

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§122.10, 122.12, 122.120, and 122.410 and also proposes new §§122.420, 122.422, 122.424, 122.426, 122.428, 122.440, 122.442, 122.444, 122.446, and 122.448.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On May 12, 2005, the United States Environmental Protection Agency (EPA) published the Clean Air Interstate Rule (CAIR) to assist nonattainment areas in downwind states in achieving compliance with the national ambient air quality standards (NAAQS) for particulate matter less than or equal to 2.5 microns (PM_{2.5}) and eight-hour ozone. Twenty-eight eastern states and the District of Columbia were identified as upwind contributors to the nonattainment of the PM_{2.5} and eight-hour ozone NAAQS prompting the requirement for the reduction in emissions of sulfur dioxide

(SO₂) and/or oxides of nitrogen (NO_x). Twenty-three states, including Texas, and the District of Columbia were found to contribute to the downwind nonattainment of the PM_{2.5} NAAQS and are required to make reductions in annual emissions of SO₂ and NO_x.

On May 18, 2005, EPA published the Clean Air Mercury Rule (CAMR) to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units (EGUs) nationwide. The mercury reduction requirements under CAMR will be implemented in two phases by providing states with declining budgets. Phase I begins in 2010 and continues through the year 2017. During those years Texas will receive an annual mercury budget of 4.657 tons. The Phase II mercury budget will begin in 2018, and Texas will receive an annual budget of 1.838 tons that year and each year thereafter.

EPA provided states with two compliance options for meeting the reduction requirements under CAIR and CAMR: 1) meet the state's emission budgets by requiring EGUs to participate in an EPA-administered interstate cap and trade program; or 2) meet an individual state emissions budget through measures of the state's choosing. The 79th Legislature, 2005, enacted House Bill (HB) 2481 requiring Texas to participate in the EPA-administered interstate cap and trade program through the incorporation by reference of the CAIR and CAMR model trading rules. HB 2481 also provided specific direction for the methodology to be used in allocating the CAIR NO_x budget provided to Texas, identified an amount of CAIR NO_x allowances to be set-aside for new sources, and specified that reductions associated with CAIR would only be required from new and existing EGUs and not from other sources of SO₂ and NO_x emissions.

The CAIR and CAMR model trading rules under federal regulations are market-based cap and trade systems designed to reduce the costs of complying with the new NO_x, SO₂, and mercury reduction requirements. The CAIR trading programs cap annual emissions of NO_x and SO₂ by providing each state in the named region with an annual emissions budget to be applied to all fossil fuel-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25 megawatts of electricity (MWe) and producing electricity for sale. The trading program caps nationwide annual emissions of mercury by providing each state with an annual emissions budget to be applied to all coal-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25 MWe and producing electricity for sale.

The commission is concurrently proposing an additional rule-making to Chapter 101, General Air Quality Rules, in this issue of the *Texas Register* that would distribute the CAIR and CAMR trading budgets for Texas to each affected unit based on the specific direction provided under HB 2481. The commission is also proposing a CAIR state implementation plan (SIP) and CAMR state plan.

HB 2481 amended Texas Health and Safety Code (THSC), Chapter 382 by adding 382.0173. THSC, §382.0173(a) requires that the commission adopt rules "incorporat[ing] by reference 40 CFR Subparts AA through II and Subparts AAA through III of Part 96 and 40 CFR Subpart HHHH of Part 60." Additionally, THSC, §382.0173(b) requires the commission to "make permanent allocations that are reflective of the allocation requirements of 40 CFR Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 CFR Subpart HHHH of Part 60 . . . at no cost . . . using the {EPA's} allocation method as specified by Section 60.4142(a)(1)(i), as issued by that

agency on May 12, 2005, or 40 CFR Section 96.142(a)(1)(i), as issued by that agency on May 18, 2005, as applicable with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c)." THSC, §382.0173(c) provides additional requirements regarding NO_x allocations, specifically a requirement to maintain a special reserve of allocations for certain units, and requirements relating to establishing allocations for specific control periods. THSC, §382.0173(d) provided that its provisions applied only while the federal rules were enforceable and that the provisions of HB 2481 do "not limit the authority of the commission to implement more stringent emissions control requirements."

The commission interprets these requirements together in order to provide effect to the expressed intent of the legislature. Specifically, the commission interprets the language of new THSC, §382.0173(d) as not restricting existing authority to require further emissions control requirements, but not to interfere with, or change, the requirements of the CAIR NO_x and SO₂, or the CAMR mercury emission trading programs. The legislature expressed clear intent that the commission implement the CAIR and CAMR emission trading programs by requiring the incorporation by reference of the CAIR and CAMR program rules as promulgated by EPA, and requiring the use of EPA-specified allocation methodology, with some exceptions for CAIR NO_x allowances.

Under the EPA model trading rules, each CAIR source and CAMR source must apply for and receive CAIR and CAMR permits as a separable part of the source's federal operating permit. These proposed new and amended sections will establish procedures and requirements for incorporating CAIR and CAMR permits into a source's federal operating permit.

CAIR permits may apply to NO_x, SO₂, or both. In rule language applicable to the issuance and administration of CAIR permits, the commission connects elements of the CAIR permit using the conjunction "and." The absence of one of the elements in individual permit circumstances does not affect the applicability of the rule to the remaining elements.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines.

§122.10, *General Definitions*

The proposed amendment would add the separable CAIR and CAMR permits to the definition of "Applicable requirement."

The commission also proposes to delete §122.10(21)(C). This subparagraph contains references to chapters of the Texas Administrative Code that no longer exist.

§122.12, *Acid Rain Definitions*

The proposed amendment to this section would add definitions for "Clean air interstate rule permit" and "Mercury budget permit" consistent with the federal definitions in 40 Code of Federal Regulations (CFR) §§60.4102, 96.102, and 96.202. In both definitions the permit is the legally binding and federally enforceable written document specifying annual trading program requirements applicable to the source and to the owners and operators and designated representative of the source and each unit. The title of the section would also be amended to "Acid Rain, Clean Air Interstate Rule, and Clean Air Mercury Rule Definitions."

§122.120, Applicability

The proposed amendment would add §122.120(a)(5) - (7) to include the requirements of Chapter 122 to CAIR NO_x, CAIR SO₂, and mercury budget units required to have a federal operating permit.

§122.410, Operating Permit Interface

This section currently contains language that incorporates by reference 40 CFR Parts 72, 74, and 76. The proposed amendment would incorporate the most recent version of 40 CFR Parts 72, 74, and 76 and would additionally incorporate 40 CFR Parts 73 and 77. These federal regulations relate to the implementation of an Acid Rain Program and include the requirements for CAIR and CAMR.

§122.420, General Clean Air Interstate Rule Annual Trading Program Permit Requirements

The proposed new section would establish the basic requirements for a CAIR permit. A CAIR permit will include sources of NO_x or SO₂, or both, that are required to have a federal operating permit. The CAIR permit will contain all applicable requirements of the annual trading programs and will be a separable part of the federal operating permit.

The proposed new section addresses the case of owners of units not required to have a federal operating permit that elect to opt-in to the CAIR program. The CAIR permit will become a part of the new source review permit.

The proposed new section would also state that no CAIR permit will be issued until EPA has received a copy of the certificate of representation for the affected source. The certificate of representation identifies the CAIR source and requires the name, address, e-mail address, and phone number of the designated representative for the source. The certificate also identifies the owners and operators of the source. The designated representative is responsible for and must have the authority to carry out the duties of the CAIR trading programs.

§122.422, Submission of Clean Air Interstate Rule Permit Applications

The proposed new section would require the designated representative for any CAIR NO_x source and CAIR SO₂ source required to have a federal operating permit to submit a complete CAIR permit application for the source by June 1, 2007, or at least 18 months prior to when a new CAIR source commences operation. The CAIR model rules require a complete CAIR permit application to be submitted to the permitting authority at least 18 months, or such lesser time provided by the permitting authority, prior to the start of the CAIR NO_x and SO₂ trading programs. Since the CAIR NO_x and SO₂ trading programs begin in 2009 and 2010, respectively, applicants would be required under EPA's model rule to submit separate permit applications for CAIR NO_x and CAIR SO₂ within one year of one another. The proposed permit application submittal deadline of June 1, 2007, would exercise the flexibility provided to states within the model rule while coordinating the permit deadlines for CAIR NO_x and SO₂ to require the submittal of one permit application for both CAIR NO_x and CAIR SO₂. The commission anticipates the coordination of the permit application submittal dates to be more efficient for both applicants and commission staff.

The proposed new section would also require that a new application covering each CAIR source be submitted by the designated representative in order to renew the CAIR permit.

§122.424, Information Requirements for Clean Air Interstate Rule Permit Applications

The proposed new section would establish content requirements for CAIR applications. The application should identify each CAIR source and unit and will contain the information required under 40 CFR §96.106, Standard Requirements. This section of the federal regulations addresses issues that include compliance accounts, allowance trading, and source monitoring. The proposed new section would require that a copy of the certificate of representation that is submitted to the EPA, under §122.420, be provided to the executive director.

§122.426, Clean Air Interstate Rule Permit Contents and Term

The proposed new section would require that each CAIR permit contain the same information required in CAIR permit applications under §122.424. Each CAIR permit incorporates the definition in 40 CFR §96.102 and §96.202, Definitions, and every allocation, transfer, or deduction of CAIR NO_x or CAIR SO₂ allowances. The term of the CAIR permit would be established by the executive director in order to coordinate the renewal of the CAIR permit with the issuance, revision, or renewal of the source's federal operating permit.

§122.428, Clean Air Interstate Rule Permit Revisions

This proposed new section authorizes the executive director to revise CAIR permits as necessary in accordance with the requirements of this chapter.

§122.440, General Mercury Budget Trading Program Permit Requirements

The proposed new section establishes the basic requirements for a mercury budget permit. A mercury budget permit will include sources with a mercury budget that are required to have a federal operating permit. The mercury budget permit will contain all applicable requirements of the annual trading program and will be a separable part of the federal operating permit.

The proposed new section would also state that no mercury budget permit will be issued until the EPA has received a copy of the certificate of representation for the affected source. The certificate of representation identifies the mercury budget source and requires the name, address, e-mail address, and phone number of the designated representative for the source. The certificate also identifies the owners and operators of the source. The designated representative is responsible for and must have the authority to carry out the duties of the Mercury Budget Trading Program.

§122.442, Submission of Mercury Budget Permit Applications

The proposed new section would require the designated representative for any mercury budget source required to have a federal operating permit to submit a complete mercury budget application for the source by June 1, 2007, or at least 18 months prior to when the new mercury budget source commences operation. The CAMR model rule requires a complete mercury budget permit application to be submitted to the permitting authority at least 18 months, or such lesser time provided by the permitting authority, prior to the start of the Mercury Budget Trading Program. Since the Mercury Budget Trading Program begins in 2010, applicants would be required under EPA's model rule to submit permit applications for mercury budget permits one year after submittal of their application for a CAIR permit. The proposed permit application submittal deadline of June 1, 2007, would exercise the flexibility provided to states within the model rule while co-

ordinating the permit deadlines for CAMR and CAIR to require the submittal of permit application for the mercury budget, CAIR NO_x, and CAIR SO₂ trading programs. The commission anticipates the coordination of the permit application submittal dates to be more efficient for both applicants and commission staff.

The proposed new section would also require that a new application covering each mercury budget source be submitted by the designated representative in order to renew the mercury budget permit.

§122.444, Information Requirements for Mercury Budget Permit Applications

The proposed new section would establish content requirements for mercury budget permit applications. The application must identify each mercury budget source and unit and will contain the information required under 40 CFR §60.4106, Standard Requirements. 40 CFR §60.4106 addresses issues that include compliance accounts, allowance trading, and source monitoring. The proposed new section would require that a copy of the certificate of representation submitted to the EPA under §122.440, be provided to the executive director.

§122.446, Mercury Budget Permit Contents and Term

The proposed new section would require that each mercury budget permit contain the same information required in mercury budget permit applications under §122.444. Each mercury budget permit would incorporate the definition in 40 CFR §60.4102, Definitions, and every allocation, transfer, and/or deduction of mercury allowances. The term of the mercury budget permit would be established by the executive director in order to coordinate the permit with the issuance, revision, or renewal of the source's federal operating permit.

§122.448, Mercury Budget Permit Revisions

This proposed new section authorizes the executive director to revise mercury budget permits as necessary in accordance with the requirements of this chapter or other rule concerning new source review permits.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

In March 2005, EPA promulgated the CAIR and the CAMR to reduce the emissions of SO₂, NO_x, and mercury. EPA provided two compliance options to meet the reduction requirements under the CAIR and CAMR. States could require EGUs to participate in an interstate cap and trade program or meet emission budgets through measures of the state's choosing. HB 2481 required Texas' participation in the interstate cap and trade program by incorporating EPA's CAIR and CAMR model trading rules by reference. EPA rules require CAIR and CAMR permits to be a separable part of federal operating permits. The proposed rulemaking establishes procedures and requirements for incorporating CAIR and CAMR permits into a source's federal operating permit.

Local governments owning or operating EGUs will have to follow the proposed procedures and requirements to incorporate CAIR and CAMR permits into their federal operating permit. Owners or operators of EGUs will incur the cost associated with preparing

permit amendments, but implementation of the proposed rulemaking is not expected to have a significant fiscal impact for local governments or other owners of EGUs.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be increased protection of human health and safety because of the reduction of SO₂, NO_x, and mercury emissions.

The proposed rulemaking establishes procedures and requirements for incorporating CAIR and CAMR permits into a source's federal operating permit. Owners or operators of EGUs will have to follow the proposed procedures and requirements to incorporate these permits into their federal operating permit, and they will incur the cost associated with preparing permit applications. Staff is unable to estimate these costs, but implementation of the proposed rulemaking is not expected to have a significant fiscal impact for local governments or other owners of EGUs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Typically, small or micro-businesses are not owners or operators of EGUs. If a small or micro-business does own or operate an EGU, they will incur the same application preparation costs as those incurred by local governments or large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking meets the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking is an incorporation by reference of changes relating to the federal Acid Rain Program in addition to requirements for federal operating permits to support CAIR and CAMR. The CAIR includes EPA-administered emissions trading

programs that will be governed by model rules provided in CAIR, which states may incorporate by reference. The EPA found that Texas is among several states that contribute significantly to nonattainment of the NAAQS for PM_{2.5} in downwind states. The EPA is requiring these upwind states to revise their SIPs to include control measures to reduce emissions of SO₂ and/or NO_x, which are precursors to PM_{2.5} formation. Reducing upwind precursor emissions will assist downwind PM_{2.5} nonattainment areas to achieve the NAAQS in a more equitable, cost-effective manner than if those areas implemented local emissions reductions alone. The EPA has specified the amount of each states' required reductions, but states have flexibility to choose the measures by which they achieve them. If states choose to control EGUs, then they must establish a budget or cap for those sources, which will be incorporated into the EGU federal operating permit. 42 United States Code (USC), §7411 creates a system for the establishment of standards of performance to reduce emissions from stationary sources. The CAMR establishes standards of performance for mercury emissions from new and existing coal-fired EGUs. 40 CFR Part 60, Subpart HHHH creates a trading program for EGUs that will provide a mechanism to meet the mercury standards by capping and then reducing emissions over time.

Specifically, the proposed rulemaking would incorporate by reference the provisions of 40 CFR Part 72 as published by EPA on May 12, 2005, with an effective date of July 1, 2006; 40 CFR Part 73 as published by EPA on May 12, 2005, with an effective date of July 1, 2006; 40 CFR Part 74 as published by EPA on May 12, 2005, with an effective date of July 1, 2006; 40 CFR Part 76 with an effective date of May 1, 1998; and 40 CFR Part 77 as published by EPA on May 12, 2005, with an effective date of July 1, 2006, for purposes of implementing an Acid Rain Program that meets the requirements of FCAA, Title IV and supports the CAIR and CAMR. Additionally, the proposed rulemaking incorporates requirements for federal operating permits for sources subject to CAIR and CAMR. The proposed rulemaking fulfills the requirements of HB 2481, enacted by the 79th Legislature, 2005, to incorporate CAIR and CAMR by reference, which includes requirements for federal operating permits for sources subject to CAIR and CAMR and compliance with the Acid Rain Program.

The proposed incorporation of the federal rules are intended to protect the environment and to reduce risks to human health and safety from environmental exposure by supporting the reductions of NO_x and SO₂ emissions from upwind states so that downwind states may reach attainment of the NAAQS for PM_{2.5} and by reducing emissions of mercury. The CAIR includes revisions to the Acid Rain Program regulations under Federal Clean Air Act (FCAA), Title IV, particularly the regulatory provisions governing the SO₂ cap and trade program. The revisions streamline the operation of the acid rain SO₂ cap and trade program and facilitate its interaction with the CAIR trading program. While the proposed rulemaking is intended to protect human health and the environment, it may adversely affect in a material way sources in the state that fall under the applicability requirements in the federal rule. Cost and benefits of the CAIR and CAMR were analyzed by EPA during the federal notice and comment rulemaking for the CAIR and the CAMR. CAIR and CAMR are required federal programs, and the ability of states to modify their requirements is limited.

The proposed rulemaking would implement requirements of the FCAA. Under 42 USC, §7410(a)(2)(D), each SIP must contain adequate provisions prohibiting any source within the state from

emitting any air pollutant in amounts that will contribute significantly to nonattainment of the NAAQS in any other state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (42 USC, Chapter 85, Air Pollution Prevention and Control). Under 42 USC, §7411(b)(1)(A), EPA must establish a list of stationary source categories that it has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 USC, §7411(b)(1)(B), then requires EPA to set national standards of performance for new sources within each listed source category. Standards of performance for existing sources of pollutants in the same source categories must then be issued. Under 42 USC, §7411(d), EPA is authorized to promulgate standards of performance that states must adopt through a SIP-like process, which requires state rulemaking action followed by review and approval by EPA under 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities. One of these requirements is that sources subject to CAIR and CAMR must make appropriate changes to their federal operating permits, and comply with changes to the Acid Rain Program.

The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410 and §7411. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. While 42 USC, §7411, like 42 USC, §7410 (SIPs), does not require specific programs, methods, or reductions in order to meet the standard, state plans must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet emission standards. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for meeting the standards. Thus, while specific measures are not generally required, the emission reductions of 42 USC, §7411 are required. States are not free to ignore the requirements of 42 USC, §7411, and must develop strategies to assure that the emission standards for new and existing sources are met. Adoption of the federal CAIR and CAMR and participation in its emissions cap and trade approach for NO_x, SO₂, and mercury emissions is the method the state has chosen to achieve those reductions in a flexible and cost-effective manner, and the proposed rules relating to federal operating permits and compliance with the Acid Rain Program requirements are required elements of both CAIR and CAMR.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and meet the requirements of 42 USC, §§7410 *et seq.*, the commission routinely proposes and adopts SIP rules and other federally required rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP or otherwise federally required was considered to be a major environmental rule that exceeds federal law, then every rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP or otherwise federally required fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to protect the environment and to reduce risks to human health by adoption of the federal revisions to the Acid Rain Program by reference, and to specify requirements for federal operating permits for sources subject to CAIR and CAMR. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by THSC, Texas Clean Air Act (TCAA), §382.0173. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because, although the proposed rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed rulemaking is an incorporation by reference of changes relating to the federal Acid Rain Program in addition to requirements for federal operating permits to support the federal CAIR and federal CAMR. The 79th Legislature enacted HB 2481, which created a requirement in THSC, TCAA, §382.0173, to adopt the federal CAIR and CAMR program rules by reference, which include requirements relating to the federal Acid Rain Program and federal operating permits. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this rulemaking action is exempt under Texas Government Code, §2007.003(b)(13). EPA promulgated the CAIR rule to reduce NO_x and SO₂ emissions from upwind states so that downwind states may reach attainment of the NAAQS for PM_{2.5}. The proposed rulemaking will enable Texas to implement the federal emissions budget and trading program and impose its requirements on new and existing fossil fuel-fired electric utility units, ultimately ensuring reductions of NO_x and SO₂ emissions. The proposed rulemaking specifically targets a category of sources

with significant NO_x and SO₂ emissions, and through the cap and trade program supports cost-effective control strategies. EPA also promulgated federal standards of performance for mercury emissions to reduce emissions of mercury. The proposed rulemaking will enable Texas to implement, through the federal operating permit program, the federal cap and trade program and impose its requirements on new and existing coal-fired electric utility units, ultimately ensuring reductions of mercury emissions into the environment. The rulemaking action will specifically advance the health and safety purpose by reducing mercury levels through an emissions cap and gradual reductions in emissions. The proposed rulemaking specifically targets a category of sources with significant mercury emissions, and through the cap and trade program supports cost-effective control strategies.

Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Coastal Management Program, the commission's rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain at least the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans and 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections in this proposal are applicable requirements under Chapter 122. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be subject to the amended requirements of these sections.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled in Austin on April 11, 2006, at 2:00 p.m. in Building E, Room 201S at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle; in Fort Worth on April 12, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 2309 Gravel Drive; and in Houston on April 13, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 5425 Polk Street, Suite H, 3rd Floor. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions after each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-046-101-EN. Comments must be received by 5:00 p.m. April 17, 2006. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Kim Herndon, Quality Planning Section, at (512) 239-1421.

SUBCHAPTER A. DEFINITIONS

30 TAC §122.10, §122.12

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which require states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of the NAAQS in any other state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, and §382.054; and FCAA, 42 USC, §§7401 *et seq.*

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Air Quality Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, ~~shall~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Air pollutant--Any of the following regulated air pollutants:

(A) - (B) (No change.)

(C) any pollutant for which a national ambient air quality standard [~~NAAQS~~] has been promulgated;

(D) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA) [~~FCAA~~], §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the United States Environmental Protection Agency (EPA) [~~EPA~~] by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g), (j), and (r), including any of the following:

(i) any pollutant subject to requirements under FCAA, §112(j). If the EPA fails to promulgate a standard by the date established under ~~[pursuant to]~~ FCAA, §112(e), any pollutant for which a subject site would be major shall be considered to be regulated on the date 18 months after the applicable date established under ~~[pursuant to]~~ FCAA, §112(e); and

(ii) any pollutant for which the requirements of FCAA, §112(g)(2) have been met, but only with respect to the individual site subject to ~~the~~ FCAA, §112(g)(2) requirement.

(2) Applicable requirement--All of the following requirements, including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) [~~EPA~~] through rulemaking at the time of issuance but have future-effective compliance dates:

(A) all [~~all~~] of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site;[-]

(B) all [~~all~~] of the requirements of Chapter 112 of this title (relating to Control of Air Pollution from Sulfur Compounds) as they apply to the emission units at a site;[-]

(C) all [~~all~~] of the requirements of Chapter 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), as they apply to the emission units at a site;[-]

(D) all [~~all~~] of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site;[-]

(E) all [~~all~~] of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site;[-]

(F) ~~the~~ [~~The~~] following requirements of Chapter 101 of this title (relating to General Air Quality Rules):

(i) - (iv) (No change.)

(v) Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as it applies to the emission units at a site;[-]

(G) any site-specific [~~Any site specific~~] requirement of the state implementation plan; [~~SIP~~]

(H) all [~~all~~] of the requirements under Chapter 106, Subchapter A of this title (relating to Permits by Rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any pre-construction permit; [-]

(I) all [~~all~~] of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under Federal Clean Air Act (FCAA) [~~FCAA~~], §111 (Standards of Performance for New Stationary Sources);

(ii) (No change.)

(iii) any standard or other requirement of the Acid Rain, Clean Air Interstate Rule, or Clean Air Mercury Rule Programs [~~Program~~];

(iv) - (ix) (No change.)

(x) any increment or visibility requirement under FCAA, Title I, Part C or any national ambient air quality standard [~~NAAQS~~], but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources); and [-]

(J) ~~the~~ [~~The~~] following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) - (vii) (No change.)

(3) (No change.)

(4) Control device--For the purposes of compliance assurance monitoring applicability, specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), the control device definition specified in 40 Code of Federal Regulations [~~CFR~~] Part 64 concerning Compliance Assurance Monitoring applies.

(5) - (8) (No change.)

(9) Federal Clean Air Act [~~FCAA~~], §502(b)(10) changes--Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally-enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(10) - (12) (No change.)

(13) Major source--

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under Federal Clean Air Act (FCAA) [~~FCAA~~], §112(b) (Hazardous Air Pollutants);

(ii) (No change.)

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the United States Environmental Protection Agency (EPA) [EPA] through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" has [~~shall have~~] the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) - (xxv) (No change.)

(xxvi) fossil fuel-fired [~~fossil-fuel-fired~~] steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) (No change.)

(D) - (E) (No change.)

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of a major source for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) (No change.)

(14) (No change.)

(15) Permit or federal operating permit--

(A) (No change.)

(B) any general operating permit [GOP] issued, renewed, or revised by the executive director under this chapter.

(16) (No change.)

(17) Permit application--An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit [GOP], or any other similar application as may be required.

(18) Permit holder--A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit [GOP].

(19) (No change.)

(20) Potential to emit--The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration established under §106.6 of this title (relating to Registration of Emissions), §116.611 of this title (relating to Registration to Use a Standard Permit), or §122.122 of this title (relating to Potential to Emit), or a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or other new source review permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the United States Environmental Protection Agency [EPA]. This term does not alter or affect the use of this term for any other purposes under the Federal Clean Air Act (FCAA) [FCAA], or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(21) Preconstruction authorization--Any authorization to construct or modify an existing facility or facilities under Chapter 106

and Chapter 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification). In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under Federal Clean Air Act (FCAA) [FCAA], §112(g) (Modifications); and

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit); [~~and~~]

~~[(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).]~~

(22) Predictive emission monitoring system [~~(PEMS)~~]--A system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(23) Proposed permit--The version of a permit that the executive director forwards to the United States Environmental Protection Agency [EPA] for a 45-day review period. The proposed permit may be the same document as the draft permit.

(24) (No change.)

(25) Renewal--The process by which a permit or an authorization to operate under a general operating permit [GOP] is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(26) (No change.)

(27) Site--The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A research and development [~~(R&D)~~] operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, [Standard Industrial Classification Manual] 1987) or the research and development [~~R&D~~] operation is a support facility for the manufacturing facility.

(28) State-only requirement--Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the Federal Clean Air Act [FCAA] or under any applicable requirement.

(29) Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 Code of Federal Regulations [CFR] Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

§122.12. Acid Rain, Clean Air Interstate Rule, and Clean Air Mercury Rule Definitions.

The following words and terms, when used in this chapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Acid rain permit--The legally binding and segregable portion of the federal operating permit issued under this chapter, including any permit revisions, specifying the Acid Rain Program [~~acid rain program~~] requirements applicable to an affected source, to each

affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(2) Acid Rain Program [~~rain program~~]--The national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Federal Clean Air Act [FCAA], Title IV, contained in 40 Code of Federal Regulations Parts 72 - 78 [CFR 72, 73, 74, 75, 76, 77, and 78].

(3) Clean Air Interstate Rule permit--The legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under 40 Code of Federal Regulations Part 96, Subpart CC or Subpart CCC, including any permit revisions, specifying the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Annual Trading Program and CAIR Sulfur Dioxide (SO₂) Trading Program requirements applicable to a CAIR NO_x source and CAIR SO₂ source, to each CAIR NO_x unit and CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(4) [(3)] Designated representative--The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the Acid Rain Program [acid rain program], to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program [acid rain program]. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with acid rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the Acid Rain Program [acid rain program].

(5) Mercury budget permit--The legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under 40 Code of Federal Regulations §§60.4120 - 60.4124, including any permit revisions, specifying the Mercury Budget Trading Program requirements applicable to a mercury budget source, to each mercury budget unit at the source, and to the owners and operators and the mercury designated representative of the source and each such unit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601386

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



SUBCHAPTER B. PERMIT REQUIREMENTS

DIVISION 1. GENERAL REQUIREMENTS

30 TAC §122.120

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which require states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, the NAAQS in any other state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, and 382.054; and FCAA, 42 USC, §§7401 *et seq.*

§122.120. Applicability.

(a) Except as identified in subsection (b) of this section, owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) (No change.)

(2) any site with an affected unit as defined in 40 Code of Federal Regulations Part [CFR] 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under Federal Clean Air Act (FCAA) [FCAA], § 129(e) (relating to Solid Waste Combustion); [or]

(4) any site that is a non-major source which the United States Environmental Protection Agency (EPA) [EPA], through rule-making, has designated as no longer exempt or no longer eligible for a deferral from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) - (B) (No change.)

(C) any non-major source in a source category designated by the EPA;[-]

(5) any Clean Air Interstate Rule (CAIR) oxides of nitrogen unit, as defined in 40 CFR §96.102, Definitions, if the CAIR oxides of nitrogen unit is otherwise required to have a federal operating permit;

(6) any CAIR sulfur dioxide unit, as defined in 40 CFR §96.202, Definitions, if the CAIR sulfur dioxide unit is otherwise required to have a federal operating permit; or

(7) any mercury budget unit, as defined in 40 CFR §60.4102, if the mercury budget unit is otherwise required to have a federal operating permit.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601387

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



SUBCHAPTER E. ACID RAIN PERMITS, CLEAN AIR INTERSTATE RULE, CLEAN AIR MERCURY RULE

DIVISION 1. ACID RAIN PERMITS

30 TAC §122.410

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which require states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, the NAAQS in any other state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, and 382.054; and FCAA, 42 USC, §§7401 *et seq.*

§122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except as specified in this section, the provisions of 40 Code of Federal Regulations (CFR) Part 72 as published by United States Environmental Protection Agency (EPA) on May 12, 2005 (70 FR 25162), [with an effective date of July 1, 2006 [June 25, 1999,] ; 40 CFR Part 73 as published by EPA on May 12, 2005 (70 FR 25162), with an effective date of July 1, 2006; 40 CFR Part 74 as published by EPA on May 12, 2005 (70 FR 25162), [with an effective date of July 1, 2006, [May 18, 1998, and] Part 76 [with an effective date of May 1, 1998; and 40 CFR Part 77 as published by EPA on May 12, 2005 (70 FR 25162), with an effective date of July 1, 2006, for purposes of im-

plementing an Acid Rain Program [acid rain program] that meets the requirements of Federal Clean Air Act [FCAA], Title IV.

(b) Applicants for sources subject to 40 CFR Parts 72 - 74 [72, 74, and] 76, and 77 shall comply with those requirements.

(c) If the provisions of 40 CFR Parts 72 - 74, [72, 74, and] 76, and 77 conflict with or are not included in this chapter, the provisions of 40 CFR Parts 72 - 74, [72, 74, and] 76, and 77 shall apply and take precedence except for the following.

(1) References to 40 CFR Part 70 in 40 CFR Parts 72 - 74, [72, 74, and] 76, and 77 shall be satisfied by the requirements of this chapter for the purposes of implementing the Acid Rain Program [acid rain program].

(2) The procedural requirements for acid rain permit revisions in 40 CFR Part 72, Subpart H (Acid Rain Permit Revisions) shall be satisfied by §122.414 of this title (relating to Acid Rain Permit Revisions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601388

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



DIVISION 2. CLEAN AIR INTERSTATE RULE

30 TAC §§122.420, 122.422, 122.424, 122.426, 122.428

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which require states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, the NAAQS in any other state.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, HB 2481, §2 of the 79th Legislative Session,

to be codified at §382.0173, and 382.054; and FCAA, 42 USC, §§7401 *et seq.*

§122.420. General Clean Air Interstate Rule Annual Trading Program Permit Requirements.

(a) For each Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) source and CAIR sulfur dioxide (SO₂) source required to have a federal operating permit, such permit must include a CAIR permit. The CAIR portion of the federal permit must be administered in accordance with this chapter as applicable, except as provided otherwise by 40 Code of Federal Regulations (CFR) Part 96, Subpart CC and Subpart CCC.

(b) Each CAIR permit must contain, with regard to the CAIR NO_x source and CAIR SO₂ source and the CAIR NO_x units and CAIR SO₂ units at the source covered by the CAIR permit, all applicable CAIR NO_x Annual Trading Program, and CAIR SO₂ Trading Program requirements and must be a complete and separable portion of the federal operating permit or other federally enforceable permit under subsection (c) of this section.

(c) For each CAIR NO_x opt-in unit and CAIR SO₂ opt-in unit that is required to have a federally enforceable permit, such permit must include a CAIR permit. The CAIR portion of the federally enforceable permit must be administered in accordance with the commission's regulations for such permit as applicable, except as otherwise provided under 40 CFR Part 96, Subparts II and III.

(d) No CAIR permit may be issued, amended, reopened, or renewed until the United States Environmental Protection Agency has received a complete certificate of representation under 40 CFR §96.113 or §96.213, Certificate of Representation for a CAIR designated representative of the CAIR NO_x and CAIR SO₂ source and the CAIR NO_x and CAIR SO₂ units at the source.

§122.422. Submission of Clean Air Interstate Rule Permit Applications.

(a) The Clean Air Interstate Rule (CAIR) designated representative of any CAIR oxides of nitrogen (NO_x) source and CAIR sulfur dioxide (SO₂) source required to have a federal operating permit shall submit to the executive director a complete CAIR permit application under §122.424 of this title (relating to Information Requirements for Clean Air Interstate Rule Permit Applications) for the source covering each CAIR NO_x unit and CAIR SO₂ unit at the source by June 1, 2007, or at least 18 months prior to the date that the CAIR NO_x unit and CAIR SO₂ unit commences operation.

(b) For a CAIR NO_x source and CAIR SO₂ source required to have a federal operating permit, the CAIR designated representative shall submit a complete CAIR permit application to the executive director under §122.424 of this title for the source covering each CAIR NO_x unit and CAIR SO₂ unit at the source to renew the CAIR permit in accordance with this chapter.

§122.424. Information Requirements for Clean Air Interstate Rule Permit Applications.

A complete Clean Air Interstate Rule (CAIR) permit application must include the following elements concerning the CAIR oxides of nitrogen (NO_x) source and CAIR sulfur dioxide (SO₂) source for which the application is submitted, in a format prescribed by the executive director:

(1) identification of the CAIR NO_x source and CAIR SO₂ source;

(2) identification of each CAIR NO_x unit and CAIR SO₂ unit at the CAIR NO_x source and CAIR SO₂ source;

(3) the standard requirements under 40 Code of Federal Regulations §96.106 and §96.206; Standard Requirements;

(4) a copy of the complete certificate of representation submitted to the United States Environmental Protection Agency as required under §122.420(d) of this title (relating to General Clean Air Interstate Rule Annual Trading Program Permit Requirements); and

(5) any other information requested by the executive director.

§122.426. Clean Air Interstate Rule Permit Contents and Term.

(a) Each Clean Air Interstate Rule (CAIR) permit must contain, in a format prescribed by the executive director, all elements required for a complete CAIR permit application under §122.424 of this title (relating to Information Requirements for Clean Air Interstate Rule Permit Applications).

(b) Each CAIR permit must incorporate the definitions of terms under 40 Code of Federal Regulations §96.102 and §96.202 and, upon recordation by the United States Environmental Protection Agency administrator under 40 Code of Federal Regulations Part 96, Subparts FF, GG, II, FFF, GGG, and III every allocation, transfer, and deduction of a CAIR oxides of nitrogen (NO_x) allowance and CAIR sulfur dioxide (SO₂) allowance to or from the compliance account of the CAIR NO_x source and CAIR SO₂ source covered by the permit.

(c) The executive director shall set the term of the CAIR permit as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, reopening, or renewal of the CAIR NO_x source's and CAIR SO₂ source's federal operating permit.

§122.428. Clean Air Interstate Rule Permit Revisions.

Except as provided in §122.426(b) of this title (relating to Clean Air Interstate Rule Permit Contents and Term), the executive director shall revise the CAIR permit, as necessary, in accordance with this chapter or the regulations for other federally enforceable permits regarding permit revisions as applicable addressing permit revisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601389

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



DIVISION 3. CLEAN AIR MERCURY RULE

30 TAC §§122.440, 122.442, 122.444, 122.446, 122.448

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with

the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, concerning adoption of rules regarding certain SIP requirements and standards of performance for certain sources; and §382.054, concerning federal operating permits; and FCAA, 42 USC, §§7401 *et seq.*, which require states to include in their SIPs adequate provisions prohibiting any source within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, the NAAQS in any other state.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, HB 2481, §2 of the 79th Legislative Session, to be codified at §382.0173, and 382.054; and FCAA, 42 USC, §§7401 *et seq.*

§122.440. General Mercury Budget Trading Program Permit Requirements.

(a) For each mercury budget source required to have a federal operating permit, such permit must include a mercury budget permit. The mercury budget portion of the federal operating permit shall be administered in accordance with this chapter except as provided otherwise by 40 Code of Federal Regulations §§60.4120 - 60.4124.

(b) Each mercury budget permit must contain, with regard to the mercury budget source and the mercury budget units at the source covered by the mercury budget permit, all applicable Mercury Budget Trading Program requirements and must be a complete and separable portion of the federal operating permit.

(c) No mercury budget permit may be issued, amended, reopened, or renewed until the United States Environmental Protection Agency has received a complete certificate of representation under 40 Code of Federal Regulations §60.4113 from a mercury designated representative of the mercury budget source and the mercury budget units at the source.

§122.442. Submission of Mercury Budget Permit Applications.

(a) The mercury designated representative of any mercury budget source required to have a federal operating permit shall submit to the executive director a complete mercury budget permit application under §122.444 of this title (relating to Information Requirements for Mercury Budget Permit Applications) for the source covering each mercury budget unit at the source by June 1, 2007, or 18 months prior to the date that the mercury budget unit commences operation.

(b) For a mercury budget source required to have a federal operating permit, the mercury budget designated representative shall submit a complete mercury budget permit application for the source under §122.444 of this title covering each mercury budget unit at the source to renew the mercury budget permit in accordance with this chapter.

§122.444. Information Requirements for Mercury Budget Permit Applications.

A complete mercury budget permit application must include the following elements concerning the mercury budget source for which the application is submitted, in a format prescribed by the executive director:

- (1) identification of the mercury budget source;
- (2) identification of each mercury budget unit at the mercury budget source;

(3) the standard requirements under 40 CFR §60.4106, Standard Requirements;

(4) a copy of the complete certificate of representation submitted to United States Environmental Protection Agency as required under §122.440(c) of this title (relating to General Mercury Budget Trading Program Permit Requirements); and

(5) any other information requested by the executive director.

§122.446. Mercury Budget Permit Contents and Term.

(a) Each mercury budget permit must contain, in a format prescribed by the executive director, all elements required for a complete mercury budget permit application under §122.444 of this title (relating to Information Requirements for Mercury Budget Permit Applications).

(b) Each mercury budget permit incorporates automatically the definitions of terms under 40 Code of Federal Regulations §60.4102 and, upon recordation by the United States Environmental Protection Agency administrator under 40 Code of Federal Regulations §§60.4150 - 60.4162, every allocation, transfer, and/or deduction of a mercury allowance to or from the compliance account of the mercury budget source covered by the permit.

(c) The executive director shall set the term of the mercury budget permit as necessary to facilitate coordination of the renewal of the mercury budget permit with issuance, revision, reopening, or renewal of the mercury budget source's federal operating permit.

§122.448. Mercury Budget Permit Revisions.

Except as provided in §122.446(b) of this title (relating to Mercury Budget Permit Contents and Term), the executive director shall revise the mercury budget permit, as necessary, in accordance with this chapter or the regulations for other federally enforceable permits regarding permit revisions, as applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601390

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 239-6087



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.35

The General Land Office (GLO) proposes amendments to §15.35, relating to Certification Status of Galveston County Dune Protection and Beach Access Plan (Plan). The GLO proposes an amendment to §15.35 to the certification status of

the Plan, adopted on August 16, 1993 and amended by order of the Commissioners' Court of Galveston County, Texas (County), on October 25, 2004, and January 18, 2006. As of the current date, the County's Plan as amended on January 18, 2006, can be viewed on the County's website at http://www2.co.galveston.tx.us/dunes/dunes_project_select.htm. New §15.35(a) eliminates the language stating that the certification of the Plan is conditional, and states that the amended Plan is consistent with state law. New §15.35(b) certifies that the "fibercrete" variance requested by the County relating to special dune protection standards for eroding areas in Section II(L) and Section III(A)(2)(i) of the Plan is consistent with state law. New §15.35(c) certifies that the variance from the Beach/Dune Rules relating to the construction of cisterns, septic tanks, and septic fields seaward of a structure under certain conditions in Section III(A)(2)(k) of the Plan is consistent with state law.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.10, 15.12, 15.21 - 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §61.011(d)(5). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO. 31 TAC §15.3(o)(4).

The commissioners court of each county including Gulf shoreline must establish a dune protection line (DPL) for the purpose of preserving sand dunes. Texas Natural Resources Code §63.011(a). A county may expressly delegate the authority to establish a DPL to a municipality within the county, which may adopt ordinances to implement the Dune Protection Act. Texas Natural Resources Code §63.011(b). A local government with authority to establish a DPL, that is, a county bordering the Gulf or a municipality within such a county with express delegation, must establish the DPL in accordance with state law. 31 TAC §15.3(f). A local government with the responsibility to establish a DPL must establish that line landward of all critical dune areas within 1,000 feet of mean high tide of the Gulf of Mexico. 31 TAC §15.3(f). The Land Commissioner, as trustee of the public lands of Texas, has the responsibility to identify and protect critical dune areas. 31 TAC §15.3(d). The local jurisdiction must notify the GLO of the establishment of and any changes to that DPL and submit information regarding the DPL to the GLO as part of its dune protection and beach access plan. 31 TAC §15.3(j). The local government must conduct a field inspection to determine the location of the DPL if it is to lie seaward of 1,000 feet from mean high tide. 31 TAC §15.3(f). The GLO may assist and advise a local government in establishing or modifying a DPL. 31 TAC §15.3(i). A local government that establishes a DPL must review it every five years, as well as within 90 days after a tropical weather system affects that portion of the coast, to determine whether the DPL still adequately protects critical dune areas. 31 TAC §15.3(k). The County expressly delegated authority to regulated dune protection and beach access within the City of Galveston to the City in Section VIII(D)(1) of the 1993 Plan (Section II(C)(2) of the Plan). The County also expressly delegated the authority to regulate dune protection and beach access in the Village of Jamaica Beach to the Village in Section VIII(D)(2) of the 1993 Plan (Section II(C)(3) of the Plan).

A local jurisdiction proposing to adopt or amend beach user fees must submit a plan detailing the proposed action to the GLO for certification. The GLO reviews a local jurisdiction's beach user fee plan and, if appropriate, certifies by rule that the beach user fee plan is consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules. Texas Natural Resources Code §61.022(c), 31 TAC §15.8(e).

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules must submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules. 31 TAC §15.3(o)(6).

Galveston County is a coastal county consisting of areas bordering Galveston Bay, Galveston Island, and Bolivar Peninsula. The County borders the Gulf of Mexico to the southeast, extending from the westernmost boundary of Chambers County on Bolivar Peninsula to the east to San Luis Pass on Galveston Island on the west. Galveston Island is a barrier island at the mouth of Galveston Bay, accessible by car from Harris County and points north by the Galveston Causeway on IH-45. Bolivar Peninsula is separated from Galveston Island by Bolivar Roads, an inlet connecting Galveston Bay to the Gulf of Mexico. Bolivar Peninsula is not accessible to Harris County by car. It is accessible from Galveston Island to its southwest only by car ferry (a 25-minute ride). Highway access to Bolivar Peninsula from Chambers County to the northeast is via coastal Highway 87, far removed from highly populated areas.

The Gulf beaches governed by the Plan are those within the County on the beaches on Bolivar Peninsula and the following areas on Galveston Island: (1) The unincorporated Pirates' Beach subdivision; and (2) four County beach parks: (i) Beach Pocket Park #1 at 7-1/2 Mile Road and FM 3005 (Pocket Park #1); (ii) Frank Carmona Pocket Park #2 at 9-1/2 Mile Road and FM 3005 (Pocket Park #2); (iii) Beach Pocket Park #3 at 11 Mile Road and FM 3005 (Pocket Park #3), and (iv) Beach Pocket Park #4 at 22 Mile Road and FM 3005 (Pocket Park #4). The Gulf beaches within the corporate limits of the City of Galveston are governed by the City of Galveston Dune Protection and Beach Access Plan (City's Plan), certified in part and conditionally certified in part in 31 TAC §15.36. The text of the City's plan and related documents can be viewed on the City's website at <http://www.cityofgalveston.org/pdf/04p72stf.pdf>. The Gulf beaches within the corporate limits of the City of the Village of Jamaica Beach are governed by the Village of Jamaica Beach Dune Protection and Beach Access Plan, certified as consistent with state law in 31 TAC §15.29.

On August 16, 1993, the Commissioners' Court of Galveston County issued an order adopting the Galveston County Dune Protection and Beach Access Plan for Bolivar Peninsula and Unincorporated Areas of Galveston Island (1993 Plan) that is currently in force. The County submitted the 1993 Plan to the GLO with a request for certification in accordance with state law. In response to that request, the GLO amended to Beach/Dune Rules to provide that the 1993 Plan is "conditionally certified . . . until the county amends its plan according to the comments provided by the General Land Office to the county on October 18, 1993, or until the General Land Office officially revokes the conditional certification." 31 TAC §15.35.

Over the intervening years since the 1993 Plan was conditionally certified, the GLO and the County have maintained an ongoing

dialogue concerning various proposed changes to the 1993 Plan that would warrant unconditional certification. Much of that dialogue has focused on certain changes necessary to satisfy the requirements of state law, particularly with respect to the DPL. The 1993 Plan has provided that the DPL is 50 feet landward of the line of vegetation, except in areas where critical dunes lie landward of 50 feet, in which case the DPL lies landward of such critical dunes areas. This ambiguous DPL has been an overriding concern of the GLO in discussing amendments to the County's plan.

On October 25, 2004, the Commissioners' Court of Galveston County adopted amendments to the 1993 Plan and submitted those amendments to the GLO with a request for certification. The amended plan included, among other changes, a dune protection line fixed at 200 feet landward of the line of vegetation on Bolivar Peninsula. It also included amended beach user fees for areas on Galveston Island, as well as a new beach user fee for Bolivar Peninsula, imposed as a \$10 annual parking sticker for parking on Bolivar beaches. The GLO responded to the County's request for certification with comments concerning several aspects of the October 25, 2004, amendments that were not consistent with state law. After months of discussion with the GLO and several field inspections of critical dune areas, the County made additional amendments to the 1993 Plan, adopting an amended and restated version of the October 25, 2004 amendments on January 18, 2006 (2006 Plan).

The 2006 Plan includes a number of notable changes from the 1993 Plan: (1) The DPL is established at 200 feet landward of the line of vegetation on Bolivar Peninsula, except for areas on the western end, where the DPL is delineated by metes and bounds, reflecting a line landward of all critical dune areas identified by the GLO and the County after several mutual field inspections; (2) The 2006 Plan authorizes a new beach user fee for Bolivar Peninsula only, which will require a parking sticker for vehicles to park on Bolivar Peninsula beaches at a cost of \$10.00 annually. Additional parking fees are authorized at Pocket Parks #2 and #3 on Galveston Island (no fee is imposed at Pocket Parks #1 and #4); (3) a special standard is adopted for construction in eroding areas providing that unreinforced fibercrete may be used for the footprint of a habitable structure and a driveway under certain conditions; (4) under certain conditions, construction of cisterns, septic tank, and septic field on previously existing, permitted, or platted lots may be placed seaward of a structure provided that they do not encroach on the public beach.

The 2006 Plan also updates the description of beach access points. A detailed designation of the beach accessways on Bolivar Peninsula and the unincorporated areas of Galveston Island can be found in Section V(B)(1) of the 2006 Plan, with maps included at Appendices 5 and 6.

The GLO reviewed information provided by the County by letters dated November 1, 2004, January 4, 2005, and January 24, 2005, in support of its request to impose its beach user fee plan as required by 31 TAC §15.8(d), together with beach user fee revenue reports required by 31 TAC §15.8(f). Based on the information provided by the County, the GLO has determined that the fee requested is reasonable in that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act.

Section 15.8 of the Beach/Dune Rules requires that local governments within a county adopt a state-approved system of reciprocity of beach users fees and fee privileges as a condition of certification of plan amendments. The 2006 Plan addresses the reciprocity requirement in Section VI (A)(6) and Section VI(E). The Park Board of Trustees for the City of Galveston currently manages the City's beach parks as well as the County's Pocket Parks on Galveston Island. The County, the City of Galveston, and the Park Board of Trustees for the City of Galveston have entered into an InterLocal Agreement that governs the collection and expenditure of beach user fees collected by the Park Board from the City's parks and the Pocket Parks on Galveston Island. The GLO anticipates that the County, the City, and the Park Board will enter into an agreement to address specific issues relating to the reciprocity of the new and increased beach user fees on Bolivar Peninsula and Galveston Island authorized in the 2006 Plan and the beach user fees imposed on Galveston Island in accordance with the City's Plan. The GLO will consider approval of the system of reciprocity prior to any final adoption of amendments to 31 TAC §15.35.

The General Land Office proposes to certify as consistent with state law the following variances from §§5.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of Beach/Dune Rules (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards) in the County's plan. The plan establishes special standards for eroding areas providing that: (1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the landward toe of the back dune; (2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in maximum of 4 foot x 4 foot sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the County Building Official, in that area 25 feet from the landward toe of the back dune to 200 feet landward of the line of vegetation; a "Fibercrete Maintenance fee" of \$200.00 shall be assessed by the County to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and reinforced concrete may be used in that area landward of 200 feet from the line of vegetation to alter or pave only the ground within the footprint of the habitable structure. The reasoned justification submitted by the County in support of its request for the variance authorizing the use of fibercrete in eroding areas within 200 feet seaward of the line of vegetation suggests that it provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that: (1) financial assurance for debris removal and beach clean-up through imposition of the maintenance fee; (2) debris removal and beach clean-up are facilitated by the use of unreinforced fibercrete in large 4 foot x 4 foot sections rather than small pavers, with less sand removed from the beach during clean-up; (3) the 4 foot x 4 foot sections of fibercrete help with wind-load requirements for windstorm and FEMA regulations by shifting the point of movement in pilings during a storm from below grade level without fibercrete to grade where fibercrete is present; and (4) prohibiting the use of fibercrete in the area between the line of vegetation and 25 feet from the landward toe of the back dune ensures that dune hydrology are not adversely affected.

The General Land Office proposes to certify as consistent with state law the following variances from §§15.4(c)(10) of the Beach/Dune Rules (relating to Dune Protection Standards) in

the County's Plan. The 2006 Plan prohibits the construction of cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields, except that: (1) cisterns, septic tanks, and septic fields which are in existence prior to the effective date of the 2006 Plan may be repaired or replaced; (2) cisterns, septic tanks, and septic fields that are located in subdivisions platted before the effective date of the 2006 Plan may be constructed, repaired, or replaced; and (3) cisterns, septic tanks, and septic fields in cisterns, septic tanks, and septic fields that are located in subdivisions platted before the effective date of the 2006 Plan may be constructed, repaired, or replaced in a location seaward of the structure they are to serve provided that the applicant shows that it is not practicable to locate the cisterns, septic tanks, and septic fields landward of the structure they are to serve. The County's Plan provides that in all cases such cisterns, septic tanks, and septic fields may not encroach on the public beach and further provides procedures and criteria for determining practicability and an appeals procedure for such determination. The reasoned justification submitted by the County in support of its request for the variance authorizing cisterns, septic tanks, and septic fields to be constructed, repaired, or replaced in a location seaward of the structure they are to serve in limited circumstances suggests that it provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach. The variance affords respect for previously acquired property rights and limits the exception to those circumstances where there is no practicable alternative to location of the cisterns, septic tanks, and septic fields in cisterns, septic tanks, and septic fields landward of the structures they serve. The procedures and criteria for determining practicability and an appeals procedure for such determination outlined in the 2006 Plan ensure construction of cisterns, septic tanks, and septic fields in a manner that protects dunes, dune vegetation, and public access to and use of the beach to the greatest extent practicable with the Beach/Dune Rules, while at the same time allowing development of property in a manner that complies with local, state, and federal regulations and statutes concerning on-site sewage facilities.

Mr. Sam Webb, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amendments. There will be a fiscal impact on the local government as a result of enforcing or administering the amendments. The County will experience an increase in net revenue estimated at approximately \$380,000 for each year of the first five years the amended section as proposed is in effect as a result of the increased beach user fees to be collected, with approximately \$80,000 from increased beach user fees from the Pocket Parks on Galveston Island and approximately \$300,000 from the new beach user fees on Bolivar Peninsula.

The GLO has determined that the proposed rule changes will not have an effect on the costs of compliance for small businesses or large businesses as the proposed changes relate to permits for parking on the beach. Individuals required to comply with the County's amended plan to increase the beach user fee to be collected in fee areas for parking on the beach will experience increased costs for parking of up to \$10.00 per year. The 2006 Plan also identifies no-fee areas on Bolivar Peninsula in Section VI(A)(1)(i) and Appendix 8, as required by 31 TAC §15.8(h),

which serves to mitigate the impact of the new beach user fee on Bolivar beachgoers.

Mr. Sam Webb has determined the public will benefit from the increase in the beach user fees imposed by Galveston County, which will continue to fund and provide adequate and improved beach-related services to the public including the following: funding for ensuring safe use of and access to and from the public beach, including vehicular controls, management, and parking regulations; sanitation and litter control, including providing and servicing trash receptacles; law enforcement; providing public facilities such as portable restrooms; and installing signage explaining the nature and extent of vehicular controls, parking areas, and access points.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

The proposal to amend §15.35 concerning Certification Status of Galveston County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The Land Office has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. The proposed actions are consistent with the Land Office's Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rule during the comment period.

The GLO has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed amendments would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments being proposed.

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legisla-

tive requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

A public hearing on this notice of proposed rulemaking will be held on Monday, March 27, 2006, at 5:00 p.m., at the Ray Holbrook Building, 601 Tremont, Galveston, Texas, in the First Floor Conference Room.

Written comments may be submitted to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX, 78711-2873; facsimile number (512) 463-6311; email address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published. Copies of the local government dune protection and beach access plans and any amendments to those plans are available from the local government and from the General Land Office's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

The amendments are proposed under Texas Natural Resources Code, Chapter 61, §61.011(d), which authorizes the GLO to adopt rules related to the certification of beach access and use plans; §61.015(b), which provides that certification of local government plans shall be by adoption into the beach/dune rules; and §61.022(c), which requires the GLO to certify the consistency of vehicular plans and fees by adoption into the beach/dune rules.

Texas Natural Resources Code §§61.011, 61.015, 61.022, and 61.070 are affected by the proposed amendments.

§15.35. Certification Status of Galveston County Dune Protection and Beach Access Plan.

(a) Galveston County (County) has submitted to the General Land Office a dune protection and beach access plan which [is conditionally certified as consistent with state law. The county's plan] was adopted on August 16, 1993, and amended on October 25, 2004, and January 18, 2006. The County's plan is certified as consistent with state law. [This conditional certification will remain in effect until the county amends its plan according to the comments provided by the General Land Office to the county on October 18, 1993, or until the General Land Office officially revokes the conditional certification.]

(b) The General Land Office certifies as consistent with state law the following variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards) in the County's plan. The plan establishes special standards for eroding areas providing that:

(1) paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the landward toe of the back dune;

(2) paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in maximum of 4 foot x 4 foot sections, which shall be a maximum of four inches thick with sections separated by expansion joists or pervious materials approved by the County Building Official, in that area 25 feet from the landward toe of the back dune to 200 feet landward of the line of vegetation;

(3) a "Fibercrete Maintenance fee" of \$200.00 shall be assessed to be used to pay for the clean-up of fibercrete from the public beaches should the need arise; and

(4) reinforced concrete may be used in that area landward of 200 feet from the line of vegetation to alter or pave only the ground within the footprint of the habitable structure.

(c) The General Land Office certifies as consistent with state law the following variances from §15.4(c)(10) of the this title (relating to Dune Protection Standards) in the County's plan. The plan prohibits the construction of cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields, except that:

(1) cisterns, septic tanks, and septic fields that are in existence prior to the effective date of the County's plan may be repaired or replaced;

(2) cisterns, septic tanks, and septic fields that are located in subdivisions platted before the effective date of the County's plan and permitted before the effective date of the County's plan may be constructed, repaired, or replaced; and

(3) cisterns, septic tanks, and septic fields that are located in subdivisions platted before the effective date of the County's plan may be constructed, repaired, or replaced in a location seaward of the structure they are to serve provided that the applicant shows that it is not practicable to locate the cisterns, septic tanks, and septic fields landward of the structure they are to serve.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601392

Trace Finley
Policy Director
General Land Office

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 305-8598

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER D. PUBLIC INFORMATION POLICIES

37 TAC §1.60

The Texas Department of Public Safety (DPS) proposes new §1.60, concerning Alleged Abuse or Neglect Investigations. Department of Public Safety officers are occasionally called upon to conduct investigations of possible child abuse which nearly always involve allegations against someone who is not a parent or guardian of the alleged victim. Chapter 261 of the Family Code makes investigations of alleged child abuse or neglect confidential and prohibits the release of both the investigation

report and any evidence developed during the investigation to any person if the agency conducting the investigation has not adopted a rule governing release of its report and investigation materials (§261.201). Thus, in some instances, DPS has been prohibited from releasing the results of an investigation to the parent(s) of a child who was allegedly abused by a third party. Adoption of this rule will permit DPS to provide investigation reports and other materials to parents when doing so would not jeopardize the child or any pending criminal case.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow parents access to investigation reports and other materials obtained in investigating child abuse cases. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Pamela Smith, Assistant General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Family Code, §261.201(a)

Texas Government Code, §411.004(3) and Family Code, §261.201(a) are affected by this proposal.

§1.60. Alleged Abuse or Neglect Investigations.

A report concerning an investigation of alleged child abuse or neglect, as well as any notes, statements or other documentary evidence gathered during such an investigation that are otherwise confidential pursuant to Chapter 261, Family Code, may be released to the parent or guardian of an alleged victim of abuse or neglect if:

(1) the investigation is complete and no criminal charges are anticipated;

(2) the parent or guardian provides acceptable proof of his/her relationship to the child victim; and

(3) the parent or guardian requesting the report is not the person alleged to have committed the abuse or neglect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601410

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 424-2135



CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.36

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter C, §4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program.

Amendment to §4.36 deletes subsection (g)(6) and is necessary in order to require that certain commercial vehicles transporting passengers and registered in this state must pass an annual inspection of all safety equipment in accordance with recent changes to the Federal Motor Carrier Safety Regulations.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There will be some economic impact anticipated for individuals, small businesses, or micro-businesses as a result of this proposed amendment. Each commercial vehicle that will be required to be inspected under this amendment will be assessed a statutory fee of \$50 in accordance with Texas Transportation Code, §548.504 and a statutory fee of \$10 under the Texas Emission Reduction Plan in accordance with Texas Transportation Code, §548.5055.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§4.36. Commercial Motor Vehicle Compulsory Inspection Program.

(a) - (f) (No change.)

(g) Exceptions to the commercial motor vehicle safety inspection program are:

(1) - (4) (No change.)

(5) the operation of fire trucks and rescue vehicles while involved in emergency and related operations; and

[(6) the private transportation of passengers; and]

(6) [(7)] farm vehicles with a gross weight, registered weight, or gross weight rating less than 48,000 pounds (except interstate operation of more than 10,000 pounds).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601411

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 424-2135



CHAPTER 5. CRIMINAL LAW ENFORCEMENT

SUBCHAPTER D. MULTICOUNTY DRUG TASK FORCES

37 TAC §§5.51 - 5.70

The Texas Department of Public Safety (DPS) proposes new Subchapter D, §§5.51 - 5.70, relating to the implementation of multicounty drug task forces. The new sections are necessary to promulgate the policies and procedures of DPS governing the statewide coordination of multicounty drug task forces.

In the new subchapter, §5.51 provides definitions; §5.52 describes communication with the director; §5.53 provides the telephone number and address of the Narcotics Service; §5.54 describes notification; §5.55 describes the application; §5.56 details who must submit an application; §5.57 describes application rejection; §5.58 describes application denial; §5.59 describes authorization cancellation; §5.60 details requirements; §5.61 describes withdrawal/restrictions or conditions; §5.62 describes written notice; §5.63 describes report to attorney general; §5.64 describes request for meeting; §5.65 describes expiration; §5.66 describes termination; §5.67 describes inspection; §5.68 details what may be inspected; §5.69 describes time limitations; and §5.70 describes interference with inspection.

The new sections are necessary as a result of the passage of Texas House Bill 1239, Acts 2005, 79th Legislature, Regular Session, Chapter 556, §§1 - 4.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies. There are no estimated reductions in cost to the state and to local governments as a result of enforcing or administering the rules.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure the high level of effectiveness of statewide multicounty drug task forces. There is no anticipated adverse economic effect on individuals, large businesses, small businesses, or micro-businesses.

Comments on the proposal may be submitted to James Brubaker, Narcotics Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0430, (512) 424-2150.

The new sections are proposed pursuant to Texas Government Code, §411.0097, which requires the department to establish policies and procedures for multicounty drug task forces, provides the authority to ensure compliance, and the authority to evaluate each multicounty drug force with respect to whether

the task force complies with state and federal requirements including policies and procedures established by the department and demonstrates effective performance outcomes; and Texas Local Government Code, §362.004, which provides that the department confirm the strategic need for the task force and the composition of the task force and that the force comply with the policies and procedures established for the operation of the multicounty drug task force.

Texas Local Government Code, §362.001(3), §362.004, Texas Government Code, §411.0097, and Texas Code of Criminal Procedure, Article 59.06(q) are affected by this proposal.

§5.51. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department or DPS--The Texas Department of Public Safety.

(2) Director--The Director of the Texas Department of Public Safety or his designee.

(3) Chief--The Chief of the Criminal Law Enforcement Division of the Texas Department of Public Safety or his designee.

(4) Commander--The Commander of the Narcotics Service of the Criminal Law Enforcement Division of the Texas Department of Public Safety or his designee.

(5) Multicounty drug task force ("task force")--has the meaning assigned that term by § 362.001, Local Government Code.

(6) Narcotics Service--The Narcotics Service of the Criminal Law Enforcement Division of the Texas Department of Public Safety.

(7) Impact Area--The service area of the task force which must be comprised of contiguous counties that, by resolution or order of its governing body, have entered into an agreement with a contiguous county to form a mutual aid drug law enforcement task force to cooperate in criminal investigations and law enforcement.

(8) Project Director--The person responsible for the operation of the task force.

(9) Task Force Commander--The person who supervises the day to day operations of the task force. The Task Force Commander will be responsible to the Project Director for the day to day operation of the task force.

§5.52. Communication with Director.

If a person is required or allowed by this subchapter to make a notification, report, or other communication to the director, the person must make the communication in writing to the director through the Commander of the Narcotics Service or his designee at the address indicated below.

§5.53. Telephone Number and Address--Narcotics Service.

To inquire about information and administrative matters with, transmit to, or otherwise contact the Narcotics Service, in general:

(1) the telephone number is: (512) 424-2150;

(2) the fax number is: (512) 424-7166;

(3) the Post Office Box mailing address is: Narcotics Service MSC 0430, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0430;

(4) the physical mailing address is: Narcotics Service MSC 0430, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422; and

(5) the email address is: taskforceinfo@txdps.state.tx.us.

§5.54. Notification.

If this subchapter requires a person to notify or advise the director of new or changed information, the person must notify the director through the appropriate DPS unit or person indicated in this subchapter. If this subchapter describes the director followed by a parenthetical reference to a section, service, or other unit of the department, the communication must be made to the director through the referenced section, service, or unit.

§5.55. Application.

(a) Required. A task force required to submit an application under this subchapter must comply with this subchapter.

(b) Form. An applicant must submit a complete application on DPS Form NAR-122 to the director no later than the 1st of August in order to be approved for the annual term beginning September 1 of each year.

Figure: 37 TAC §5.55(b)

(c) Required Information. A person submitting an application under this section must:

(1) identify the drug threat to be addressed in the impact area;

(2) explain the strategic need for addressing the drug threat in the impact area;

(3) describe the composition of the task force, to include the names of the participating agencies and the names, training records, and experience of the individual officers to be assigned to the task force; and

(4) provide any other information necessary to process the application.

§5.56. Who Must Submit an Application.

Any drug task force composed of county or city law enforcement agencies located in two or more counties of this state.

(1) The applicant must be the Project Director who shall submit an application on behalf of the task force.

(2) The Project Director must be the elected District Attorney, the elected Sheriff, or the Chief of Police of a municipal police department located within the proposed impact area.

(3) The Project Director shall ensure that the task force adheres to all requirements contained in the application and in this subchapter.

§5.57. Rejection.

(a) The director may reject an application without further processing if an application, form, or document is incomplete, illegible, or missing.

(b) The director may request additional information necessary to process the application from the applicant and provide a deadline for the submission of the requested information. The director may reject an application without further processing if the requested information is not provided to the director by the deadline.

§5.58. Denial.

The director may deny an application if:

(1) the applicant has not sufficiently articulated and established a strategic need for the task force to specifically address the threat of the impact area;

(2) the composition of the task force has been inadequately disclosed for review of personnel as to their suitability for assignment to the task force or is unacceptable; or

(3) during the previous year, the task force has failed to comply with department rules or has failed to demonstrate effective performance outcomes.

§5.59. Cancellation.

The director may cancel an authorization if the director authorized the application in error.

§5.60. Requirements.

(a) A task force and any personnel assigned to the task force shall comply with the following:

(1) Department policies and procedures in the most current version of the department's task force manual;

(2) State and federal law and requirements;

(3) All provisions of this subchapter; and

(4) Best police practices.

(b) A task force shall demonstrate effective performance outcomes.

(c) A task force shall maintain an acceptable composition.

(d) A task force shall timely, accurately, and completely respond to any request for information, data, or reports by the director.

(e) If the Project Director or any task force personnel change, then the current Project Director shall notify the director within five calendar days after the change. A task force shall have a current Project Director at all times. If the Project Director changes, the current Project Director shall complete and sign the certification section of the application form and submit the certification to the director within five calendar days after the change.

(f) At least twenty-five percent of personnel assigned to the task force shall be randomly tested at least quarterly for drugs by an independent scientific laboratory that meets federal Department of Health and Human Services guidelines for drug/metabolite testing. The Project Director shall provide the director with a copy of the task force's written drug testing policy if requested. The Project Director shall maintain documentation on file evidencing that the above drug testing was conducted. The Project Director shall notify the director of the identity of any employee with a positive drug test and shall take appropriate action as outlined in the applicant agency's policy on providing a drug-free workplace.

(g) The Project Director shall notify the director in writing, within five calendar days of the arrest, of the identity of any personnel that are arrested, the reason for the arrest, and any resulting action taken by the task force.

(h) The Project Director shall notify the director in writing of any lawsuit or pending litigation involving the task force or its personnel no later than five calendar days after receiving notice of any lawsuit or pending litigation.

§5.61. Withdrawal/Restrictions or Conditions.

(a) The director may withdraw an authorization to operate a task force or may place restrictions or conditions on task force operations if the task force fails to comply with any provision of this subchapter.

(b) Except as provided by this subsection, a task force whose authorization has been withdrawn may not apply for authorization to

operate until one year after the date a withdrawal of authorization became final. Within that year, the director will not reinstate a task force who has had its authorization to operate withdrawn unless the task force submits a new application and establishes that the facts supporting the withdrawal of authorization have been negated. Even if a reinstatement is authorized to be effective any date other than September 1, the authorization will expire August 31.

§5.62. Written Notice.

The director shall provide written notice to a task force, through the Project Director, of any proposed action or action taken by the department affecting the task force's operations.

§5.63. Report to Attorney General.

(a) A task force may only retain proceeds from forfeitures for the period of time that the task force was authorized by the director.

(b) The director shall report the expiration, withdrawal, denial, or cancellation of a task force's authorization to the attorney general.

(c) The director may report a task force who has had restrictions or conditions placed on task force operations to the attorney general.

§5.64. Request for Meeting.

(a) A Project Director may submit a request for a meeting with the Chief upon denial, cancellation, or withdrawal of authorization.

(b) The request for a meeting, articulating points of contention, must be in writing.

(c) The request shall be addressed to the Chief and must be received by the Chief no later than 15 calendar days after the director mailed its written notice of denial, cancellation, or withdrawal of authorization to the task force.

(d) The request for a meeting may be faxed or mailed to the Chief.

(1) The fax number is: (512) 424-5794.

(2) The P.O. Box mailing address is: Criminal Law Enforcement MSC 0400, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0400.

(3) The physical mailing address is: Criminal Law Enforcement MSC 0400, Texas Department of Public Safety, 6100 Guadalupe, Building E, Room 100, Austin, Texas 78752.

(e) An untimely request for a meeting shall be rejected without further proceedings.

(f) Upon receipt of a timely request for a meeting, the Chief shall schedule a meeting.

(g) The applicant may submit a written response to the Chief, articulating points of contention and rebutting findings by the department, on or before the scheduled meeting date in lieu of attending the meeting in person.

(h) The Chief shall decide whether to uphold or modify the denial, cancellation, or withdrawal of authorization.

(i) The Chief's decision shall be final and not subject to appeal.

(j) If there is no request for a meeting or an untimely request for a meeting, then the denial, cancellation, or withdrawal is final on the 16th calendar day after the director mailed its written notice of denial, cancellation, or withdrawal of authorization to the task force and is not subject to further appeal.

§5.65. Annual Expiration.

A task force authorization expires on the 31st of August of each year. After expiration, the prior authorization provides the task force with no authority to continue to operate as a multicounty drug task force.

§5.66. Termination.

(a) When. An authorization terminates:

(1) after expiration under this subchapter;

(2) when a task force voluntarily discontinues operations;

(3) when a withdrawal, cancellation, or denial of authorization is final; or

(4) at the end of the period of authorization.

(b) New application required. After termination, an applicant must apply for a new authorization to operate a task force.

(c) Effect of termination. After termination, the prior authorization provides the task force with no authority to operate as a multicounty drug task force.

(d) Discontinued activity. On the day a task force discontinues operations, the Project Director must notify the director in writing by close of business. The director shall immediately terminate the task force's authorization to operate.

§5.67. Inspection.

The director or a member of the department may inspect any aspect of the task force operation to ensure compliance with applicable law and regulation, state and federal requirements, and policies and procedures established by the department.

§5.68. What May Be Inspected.

The director or a member of the department may examine, audit, inspect and copy:

(1) a record, report, or other document created or maintained pursuant to the operation of the task force; and

(2) administrative information relating to the collection of statistical information.

§5.69. Time Limitations.

The director or a member of the department may enter the offices maintained by the task force at a reasonable time, including:

(1) normal business hours; or

(2) at another time when the task force offices are occupied or open.

§5.70. Interference with Inspection.

No individual in charge of a premise, item, or record covered by this subchapter may refuse or interfere with any of the following activities related to the inspection:

(1) entry to the premises;

(2) examination, audit, or inspection or records; or

(3) copying a record or related document.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601412
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 424-2135



CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.89

The Texas Department of Public Safety proposes amendments to §15.89, concerning Driver Improvement.

The proposed amendments serve to clarify that all endorsement violations, including a Commercial Driver License (CDL) endorsement violation, will be assessed a specific surcharge and not assessed points under the Driver Responsibility Program. Additionally, the proposed amendments will remove superfluous language from the list that makes reference to four non-traffic violations. Finally, the proposed amendments are needed in light of the passage of House Bill 183 during the 79th Legislature, Regular Session. House Bill 183 amended Texas Transportation Code, §708.052 to make an offense under §545.412, relating to child safety seats, a moving violation of traffic law and subject to a surcharge.

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in a crash. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from \$100 to \$2000 every year for three years.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the section will be current and updated rules. There is no anticipated economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Claire McGuinness, Senior Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231, (512) 424-7171 (fax).

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.002.

Texas Government Code, §411.004(3) and Texas Transportation Code, §708.002 are affected by this proposal.

§15.89. *Moving Violations.*

(a) Moving violations are defined as an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.

(b) A list of traffic offenses that constitute a moving violation is available in Table 1.

Figure: 37 TAC §15.89(b)

(c) Table 1 also indicates the moving violations that will be assessed points under the Driver Responsibility Program, Texas Transportation Code (TRC), Chapter 708, Subchapter B.

(1) Not all moving violations are assessed points under the Driver Responsibility Program, however, they may be considered for Habitual Violator action under TRC, §521.292(a)(3).

(2) Moving violation convictions that are assessed specific surcharges pursuant to Texas Transportation Code, §§708.102 (intoxicated driver offenses), 708.103 (driving while license invalid or without financial responsibility), and 708.104 (driving without valid license including no commercial driver license, driving without the proper commercial license endorsement and driving without the proper motorcycle endorsement), will not be assessed points under the Driver Responsibility Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601413
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 424-2135



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 720. 24-HOUR CARE LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Chapter 720, 24-Hour Care Licensing, consisting of §§720.24 - 720.36, 720.38 - 720.46, 720.48 - 720.54, 720.56 - 720.60, 720.63, 720.65 - 720.67, 720.117 - 720.126, 720.131 - 720.137, 720.201 - 720.207, 720.231 - 720.248, 720.301 - 720.336, 720.361 - 720.374, 720.401 - 720.403, 720.405 - 720.423, 720.426 - 720.432, 720.440 - 720.446, 720.448, 720.449, 720.501 - 720.508, 720.512, 720.514, 720.515, 720.520 - 720.530, 720.535 - 720.537, 720.540 - 720.546, 720.548 - 720.556, 720.558 - 720.560, 720.570 - 720.574, 720.600 - 720.608, 720.620, 720.701, 720.702, 720.901 - 720.923, 720.1001 - 720.1013, 720.1101, 720.1501 - 720.1506, and 720.9801. DFPS is required by Chapter 42 of the Human Resources Code to periodically review all minimum standard rules. In addition, part of the Child Care Licensing Division's (Licensing) business plan is to review, analyze, and update Licensing rules to strengthen

the protection of children in out-of-home care and improve an operator's understanding of the rules. The rules in Chapter 720 are repetitive and grouped according to the type of facility. DFPS is proposing to repeal this chapter, and replace it with three new chapters--Chapter 748, General Residential Operations and Residential Treatment Centers; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes. The proposed rules will facilitate understanding of the law and Licensing requirements and are written using "plain language" techniques with a question and answer format. Rules that are easy to read and understand will result in higher rates of compliance.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the repeal of obsolete rules and replacing them with updated rules, which will reduce the risk of harm to children and improve the quality of care based on current knowledge and practices. In addition, the new rules will be easier to understand, which should encourage voluntary compliance and reduce noncompliance caused by misinterpretation of the rules. Furthermore, Ms. Brown has determined that as a result of the proposed changes there is no anticipated adverse impact on large, small, or micro-businesses or persons required to comply with the proposed sections, namely general residential operations, residential treatment centers, child-placing agencies, and independent foster family and group homes, other than the act of repealing and replacing Chapter 720 with Chapter 748, General Residential Operations and Residential Treatment Centers; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes. These new chapters are proposed in this issue of the *Texas Register* and the impact is described in the preamble section of each chapter.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Electronic comments may be submitted to rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-330, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DFPS will hold a public hearing on the proposal on Thursday, March 23, 2006, from 2:00 p.m. until 6:00 p.m. in the John H. Winters Building Public Hearing Room, 125-E, 701 West 51st Street, Austin, Texas. Persons with disabilities planning to attend this meeting who may need auxiliary aids or services should

contact Amy Chandler at (512) 438-3134 by March 20, 2006, so appropriate arrangements can be made.

HHSC has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §§720.24 - 720.36, 720.38 - 720.46, 720.48 - 720.54, 720.56 - 720.60, 720.63, 720.65 - 720.67

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.24. *Structure of a Child-Placing Agency.*

§720.25. *Governing Body of the Child-Placing Agency.*

§720.26. *Fiscal Accountability.*

§720.27. *Child-Placing Agency Policies.*

§720.28. *Client Rights.*

§720.29. *Children's Rights.*

§720.30. *Medical and Dental Care.*

§720.31. *Problem Management.*

§720.32. *Serious Incident Reports.*

§720.33. *Client Records.*

§720.34. *Personnel Policies.*

§720.35. *General Personnel Requirements.*

§720.36. *Personnel Qualifications and Responsibilities for Level I Child-Placing Staff.*

§720.38. *Foster Parent and Agency Home Child-Care Staff.*

§720.39. *Training Requirements.*

§720.40. *Placement of a Child in Substitute Care.*

§720.41. *Substitute Care Intake.*

§720.42. *Substitute Care Placement.*

§720.43. *Initial Service Plan.*

§720.44. *Service Plan Review.*

§720.45. *Subsequent Placement.*

- §720.46. *Discharge.*
- §720.48. *Foster Home Verification.*
- §720.49. *Foster Home Management.*
- §720.50. *Adoption Policies.*
- §720.51. *Adoption Service Plan.*
- §720.52. *Birth Parent Preparation.*
- §720.53. *Adoptive Child Preparation.*
- §720.54. *Adoptive Applicant Preparation.*
- §720.56. *Pre-Placement Requirements.*
- §720.57. *Adoptive Placement Requirements.*
- §720.58. *Pre-Adoption Consummation Activities.*
- §720.59. *Post-Adoption Services.*
- §720.60. *Subsequent Adoptions.*
- §720.63. *Legal Basis for Operation of a Child-Placing Agency.*
- §720.65. *Adoption: Allowable Expenditures on Behalf of Birth Parents.*
- §720.66. *Serious Incident Reporting Requirements.*
- §720.67. *Requirements: Health, Social, Educational, and Genetic History Report.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.
 TRD-200601312
 Gerry Williams
 General Counsel
 Department of Family and Protective Services
 Earliest possible date of adoption: April 16, 2006
 For further information, please call: (512) 438-3437



SUBCHAPTER B. STANDARDS FOR AGENCY HOMES

40 TAC §§720.117 - 720.126

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

- §720.117. *Foster Family Qualifications.*

- §720.118. *Admission.*
- §720.119. *Daily Care.*
- §720.120. *Children's Rights.*
- §720.121. *Nutrition.*
- §720.122. *Environment.*
- §720.123. *Medical.*
- §720.124. *Records.*
- §720.125. *Emergency Reports.*
- §720.126. *Other Requirements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.
 TRD-200601313
 Gerry Williams
 General Counsel
 Department of Family and Protective Services
 Earliest possible date of adoption: April 16, 2006
 For further information, please call: (512) 438-3437



SUBCHAPTER C. STANDARDS FOR HABILITATIVE AND THERAPEUTIC AGENCY HOMES

40 TAC §§720.131 - 720.137

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

- §720.131. *Personnel Staffing Standards for Habilitative Agency Homes.*
- §720.132. *Admission Policies for Habilitative Agency Homes.*
- §720.133. *Child Care, Development, and Training Standards for Habilitative Agency Homes.*
- §720.134. *Buildings, Grounds, and Equipment Standards for Habilitative Agency Homes.*
- §720.135. *Personnel Standards For Therapeutic Agency Homes.*
- §720.136. *Admission Standards for Therapeutic Agency Homes.*
- §720.137. *Child Care, Development, and Training Standards for Therapeutic Agency Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601314

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER D. STANDARDS FOR HABILITATIVE AND THERAPEUTIC FAMILY HOMES

40 TAC §§720.201 - 720.207

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.201. *Personnel Staffing Standards for Habilitative Family Homes.*

§720.202. *Admission Policies for Habilitative Family Homes.*

§720.203. *Child Care, Development, and Training Standards for Habilitative Family Homes.*

§720.204. *Buildings, Grounds, and Equipment Standards for Habilitative Family Homes.*

§720.205. *Personnel Standards for Therapeutic Family Homes.*

§720.206. *Admission Standards for Therapeutic Family Homes.*

§720.207. *Child Care, Development, and Training Standards for Therapeutic Family Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601315

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER E. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §§720.231 - 720.248

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.231. *Qualifications.*

§720.232. *Training.*

§720.233. *Reports and Records.*

§720.234. *Other Requirements.*

§720.235. *Admission Policies.*

§720.236. *Intake Study.*

§720.237. *Discharge.*

§720.238. *Children's Records.*

§720.239. *Plan of Service.*

§720.240. *Daily Care.*

§720.241. *Money.*

§720.242. *Education, Work, and Training.*

§720.243. *Children's Rights and Privileges.*

§720.244. *Medical and Dental Care.*

§720.245. *Nutrition.*

§720.246. *Health and Safety.*

§720.247. *Environment.*

§720.248. *Definition.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601316

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER F. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §§720.301 - 720.336

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

- §720.301. *Foster Group Homes Responsible to a Child-Placing Agency.*
- §720.302. *Requirements for Home Responsible to Child-Placing Agency.*
- §720.303. *Staffing and Training.*
- §720.304. *Daily Care in Homes Responsible to Child-Placing Agency.*
- §720.305. *Children's Rights and Privileges in Homes Responsible to a Child-Placing Agency.*
- §720.306. *Medical and Dental Care.*
- §720.307. *Nutrition.*
- §720.308. *Health and Safety.*
- §720.309. *Environment.*
- §720.310. *Food Preparation, Storage, and Equipment.*
- §720.311. *Reports and Records.*
- §720.312. *Other Requirements.*
- §720.313. *Legal Basis for Operation of Independent Foster Group Homes.*
- §720.314. *Governing Body Responsibilities of Independent Foster Group Homes.*
- §720.315. *Fiscal Accountability of Independent Foster Group Homes.*
- §720.316. *Personnel Requirements for Independent Foster Group Homes.*
- §720.317. *Staffing of Independent Foster Group Homes.*
- §720.318. *Training of Staff in Independent Foster Group Homes.*
- §720.319. *Admission Policies of Independent Foster Group Homes.*

- §720.320. *Intake Study in the Independent Foster Group Home.*
- §720.321. *Emergency Placement in an Independent Foster Group Home.*
- §720.322. *Plan of Service.*
- §720.323. *Daily Care in Independent Foster Group Home.*
- §720.324. *Money.*
- §720.325. *Education, Work, and Training in the Independent Foster Group Home.*
- §720.326. *Children's Rights and Privileges in an Independent Foster Group Home.*
- §720.327. *Medical and Dental Care in the Independent Foster Group Home.*
- §720.328. *Nutrition.*
- §720.329. *Discharge.*
- §720.330. *Health and Safety in the Independent Foster Group Home.*
- §720.331. *Environment of the Independent Foster Group Home.*
- §720.332. *Food Preparation, Storage, and Equipment in the Independent Foster Group Home.*
- §720.333. *Children's Records.*
- §720.334. *Staff Records.*
- §720.335. *Emergency Reports and Records in the Independent Foster Group Homes.*
- §720.336. *Definition.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601317

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER G. STANDARDS FOR HABILITATIVE AND THERAPEUTIC GROUP HOMES RESPONSIBLE TO A CHILD-PLACING AGENCY AND FOR INDEPENDENT HABILITATIVE AND THERAPEUTIC GROUP HOMES

40 TAC §§720.361 - 720.374

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the

health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.361. *Personnel Staffing Standards for Habilitative Group Homes Responsible to a Child-Placing Agency.*

§720.362. *Admission Policies for Habilitative Group Homes Responsible to a Child-Placing Agency.*

§720.363. *Child Care, Development, and Training Standards for Habilitative Group Homes Responsible to a Child-Placing Agency.*

§720.364. *Buildings, Grounds, and Equipment Standards for Habilitative Group Homes Responsible to a Child-Placing Agency.*

§720.365. *Personnel Standards for Therapeutic Group Homes Responsible to a Child-Placing Agency.*

§720.366. *Admission Policies for Therapeutic Group Homes Responsible to a Child-Placing Agency.*

§720.367. *Child Care, Development, and Training Standards for Therapeutic Group Homes Responsible to a Child-Placing Agency.*

§720.368. *Personnel Staffing Standards for Independent Habilitative Group Homes.*

§720.369. *Admission Policies for Independent Habilitative Group Homes.*

§720.370. *Child Care, Development, and Training Standards for Independent Habilitative Group Homes.*

§720.371. *Buildings, Grounds, and Equipment Standards for Independent Habilitative Group Homes.*

§720.372. *Personnel Standards for Independent Therapeutic Group Homes.*

§720.373. *Admission Policies for Independent Therapeutic Group Homes.*

§720.374. *Child Care, Development, and Training Standards for Independent Therapeutic Group Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601318

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER H. CONSOLIDATED STANDARDS FOR 24-HOUR CARE FACILITIES

40 TAC 720.401 - 720.403, 720.405 - 720.423, 720.426 - 720.432, 720.440 - 720.446, 720.448, 720.449, 720.501 - 720.508, 720.512, 720.514, 720.515, 720.520 - 720.530, 720.535 - 720.537, 720.540 - 720.546, 720.548 - 720.556, 720.558 - 720.560, 720.570 - 720.574

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.401. *Organization.*

§720.402. *Governing Body.*

§720.403. *General Administration.*

§720.405. *Children's Records.*

§720.406. *Administrative Reports and Records.*

§720.407. *Requirements for New Facilities.*

§720.408. *Personnel Policies and Practices.*

§720.409. *Personnel Records.*

§720.410. *Volunteers.*

§720.411. *General Staffing.*

§720.412. *Management Staff.*

§720.413. *Program Staff.*

§720.414. *Staff-Child Ratio.*

§720.415. *Training and Orientation.*

§720.416. *Admission Policies.*

§720.417. *Admission Procedures.*

§720.418. *Emergency Admission.*

§720.419. *Service Planning.*

§720.420. *Plan of Service.*

§720.421. *Plan of Service Review.*

§720.422. *Discharge.*

§720.423. *Problem Management.*

§720.426. *Child Care.*

§720.427. *Medical and Dental Care.*

§720.428. *Nutrition.*

§720.429. *Health and Safety.*

§720.430. *Environment*

§720.431. *Transportation.*
 §720.432. *Food Preparation, Storage, and Equipment.*
 §720.440. *Program Staff-Institutions Providing Basic Child Care.*
 §720.441. *Staff-Child Ratio-Institutions Providing Basic Child Care.*
 §720.442. *Training-Institutions Providing Basic Child Care.*
 §720.443. *Admission Policies-Institutions Providing Basic Child Care.*
 §720.444. *Plan of Service Review-Institutions Providing Basic Child Care.*
 §720.445. *Discharge-Institutions Providing Basic Child Care.*
 §720.446. *Problem Management: Institutions Providing Basic Child Care.*
 §720.448. *Child Care: Institutions Providing Basic Child Care.*
 §720.449. *Environment-Institutions Providing Basic Child Care.*
 §720.501. *Program Staff-Institutions Serving Mentally Retarded Children.*
 §720.502. *Staff-Child Ratio-Institutions Serving Mentally Retarded Children.*
 §720.503. *Training-Institutions Serving Mentally Retarded Children.*
 §720.504. *Admission Policies-Institutions Serving Mentally Retarded Children.*
 §720.505. *Admission Procedures-Institutions Serving Mentally Retarded Children.*
 §720.506. *Plan of Service-Institutions Serving Mentally Retarded Children.*
 §720.507. *Plan of Service Review--Institutions Serving Mentally Retarded Children.*
 §720.508. *Problem Management-Institutions Serving Mentally Retarded Children.*
 §720.512. *Child Care-Institutions Serving Mentally Retarded Children.*
 §720.514. *Health and Safety-Institutions Serving Mentally Retarded Children.*
 §720.515. *Environment-Institutions Serving Mentally Retarded Children.*
 §720.520. *Program Director and Admission Assessment Staff-Residential Treatment Centers.*
 §720.521. *Other Professional Staff-Residential Treatment Centers.*
 §720.522. *Staff Child Ratio-Residential Treatment Centers.*
 §720.523. *Training-Residential Treatment Centers.*
 §720.524. *Admission Policies-Residential Treatment Centers.*
 §720.525. *Admission Procedures-Residential Treatment Centers.*
 §720.526. *Emergency Admission-Residential Treatment Centers.*
 §720.527. *Preliminary Treatment Plan-Residential Treatment Centers.*
 §720.528. *Treatment Plan-Residential Treatment Centers.*
 §720.529. *Treatment Plan Review-Residential Treatment Centers.*
 §720.530. *Problem Management-Residential Treatment Centers.*

§720.535. *Child Care-Residential Treatment Centers.*
 §720.536. *Health and Safety-Residential Treatment Centers.*
 §720.537. *Environment-Residential Treatment Centers.*
 §720.540. *Program Staff-Halfway Houses.*
 §720.541. *Staff-Child Ratio-Halfway Houses.*
 §720.542. *Training-Halfway Houses.*
 §720.543. *Admission Policies-Halfway Houses.*
 §720.544. *Plan of Service-Halfway Houses.*
 §720.545. *Plan of Service Review-Halfway Houses.*
 §720.546. *Problem Management-Halfway Houses.*
 §720.548. *Child Care-Halfway Houses.*
 §720.549. *Environment-Halfway Houses.*
 §720.550. *Program Staff -Therapeutic Camps.*
 §720.551. *Staff-Child Ratio-Therapeutic Camps.*
 §720.552. *Training-Therapeutic Camps.*
 §720.553. *Admission Policies--Therapeutic Camps.*
 §720.554. *Plan of Service-Therapeutic Camps.*
 §720.555. *Plan of Service Review-Therapeutic Camps.*
 §720.556. *Problem Management-Therapeutic Camps.*
 §720.558. *Child Care-Therapeutic Camps.*
 §720.559. *Medical and Dental Care-Therapeutic Camps.*
 §720.560. *Environment--Therapeutic Camps.*
 §720.570. *Definitions.*
 §720.571. *Facilities Providing Care for Children and Adults.*
 §720.572. *Texas Department of Health--Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps--Permanent Camps.*
 §720.573. *Texas Department of Health--Minimum Standards of Environmental Health for Texas Department of Human Services Licensed Therapeutic Camps--Primitive or Wilderness Camps.*
 §720.574. *Additional Minimum Standards for Institutions Serving Mentally Retarded Children with Primary Medical Needs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601319

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER I. STANDARDS FOR ASSESSMENT SERVICES

40 TAC §§720.600 - 720.608

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.600. *Definition of Assessment Services.*

§720.601. *Assessment Service Providers.*

§720.602. *Administration of Assessment Services.*

§720.603. *Assessment Services Policy.*

§720.604. *Staffing for Assessment Services.*

§720.605. *Intake for Assessment Services.*

§720.606. *Assessment Plan.*

§720.607. *Assessment Services.*

§720.608. *Assessment Report.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601320

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER J. STANDARDS FOR INSTITUTIONS PROVIDING BASIC CHILD CARE

40 TAC §720.620

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study

and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC, §42.042.

§720.620. *Discharge.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601321

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER K. STANDARDS FOR THERAPEUTIC CAMPS

40 TAC §720.701, §720.702

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.701. *Texas Department of Health-Minimum Standards of Environmental Health for Department of Protective and Regulatory Services Licensed Therapeutic Camps--Permanent Camps.*

§720.702. *Texas Department of Health-Minimum Standards of Environmental Health for Texas Department of Protective and Regulatory Services Licensed Therapeutic Camps--Primitive or Wilderness Camps.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601322

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

SUBCHAPTER M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §§720.901 - 720.923

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

- §720.901. *Legal Basis for Operation.*
- §720.902. *Governing Body Responsibilities*
- §720.903. *Fiscal Accountability.*
- §720.904. *Placement in Foster or Adoptive Homes.*
- §720.905. *Reports and Records.*
- §720.906. *Personnel Policies.*
- §720.907. *Administrator Qualifications and Responsibilities.*
- §720.908. *Staffing.*
- §720.909. *Qualifications and Responsibilities.*
- §720.910. *Training.*
- §720.911. *Staff Records.*
- §720.912. *Admission Policies.*
- §720.913. *Intake Information.*
- §720.914. *Children's Records.*
- §720.915. *Daily Care.*
- §720.916. *Children's Rights.*
- §720.917. *Medical and Dental Care.*
- §720.918. *Nutrition.*
- §720.919. *Discharge.*
- §720.920. *Health and Safety.*
- §720.921. *Environment.*
- §720.922. *Food Preparation, Storage, and Equipment.*
- §720.923. *Definitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601323

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

SUBCHAPTER O. GENERAL POLICIES AND PROCEDURES

40 TAC §§720.1001 - 720.1013, 720.1101

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

- §720.1001. *Definitions.*
- §720.1002. *Behavior Intervention Precedence.*
- §720.1003. *Required Behavior Intervention Policies and Procedures.*
- §720.1004. *Less Restrictive Behavior Interventions.*
- §720.1005. *Restraint and Seclusion: General Requirements.*
- §720.1006. *Emergency Medication.*
- §720.1007. *Personal Restraint.*
- §720.1008. *Mechanical Restraint.*
- §720.1009. *Protective Devices.*
- §720.1010. *Supportive Devices.*
- §720.1011. *Seclusion.*
- §720.1012. *Behavior Intervention Training.*
- §720.1013. *Evaluation of Behavior Interventions.*
- §720.1101. *Procedural Guide for Pharmaceutical Services in the Child-Caring Institution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601324

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

SUBCHAPTER S. STANDARDS FOR CHILD-CARE FACILITIES SERVING CHILDREN WITH AUTISTIC-LIKE BEHAVIOR

40 TAC §§720.1501 - 720.1506

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§720.1501. *Staffing.*

§720.1502. *Training.*

§720.1503. *Admission.*

§720.1504. *Treatment Plan.*

§720.1505. *Behavior Therapy.*

§720.1506. *Medical Therapy.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601325

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER XXXX. SUPPORT DOCUMENTS

40 TAC §720.9801

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC, §42.042.

§720.9801. *Daily Food Guide.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601326

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new Chapter 748, General Residential Operations and Residential Treatment Centers, consisting of Subchapter A, Purpose and Scope, §748.1, §748.3; Subchapter B, Definitions and Services, Division 1, Definitions, §748.41, §748.43; Division 2, Services, §§748.61, 748.63, 748.65, 748.67, 748.69, 748.71, 748.73, 748.75; Subchapter C, Organization and Administration, Division 1, Permit Holder Responsibilities, §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111; Division 2, Governing Body, §748.131, §748.133; Division 3, General Fiscal Requirements, §748.161, §748.163; Division 4, Required Postings, §748.191; Division 5, Policies and Procedures, §§748.231, 748.233, 748.235, 748.237, 748.239; Subchapter D, Reports and Record Keeping, Division 1, Serious Incident Reports, §§748.301, 748.303, 748.305, 748.307, 748.309, 748.311, 748.313, 748.315; Division 2, Operation Records, §748.341; Division 3, Personnel Records, §748.361, §748.363; Division 4, Child Records, §§748.391, 748.393, 748.395, 748.397, 748.399, 748.401; Division 5, Record Retention, §§748.431, 748.433, 748.435; Subchapter E, Personnel, Division 1, General Requirements, §§748.501, 748.503, 748.505, 748.507, 748.509, 748.511; Division 2, Child-Care Administrator, §§748.531, 748.533, 748.535, 748.537, 748.539; Division 3, Professional Level Service Providers, §§748.561, 748.563, 748.565, 748.567, 748.569, 748.571, 748.573, 748.575; Division 4, Treatment Director, §§748.601, 748.603, 748.605, 748.607; Division 5, Caregivers, §§748.681, 748.683, 748.685; Division 6, Contract Staff, Volunteers, and Student Interns, §§748.721, 748.723, 748.725, 748.727, 748.729, 748.731; Subchapter F, Training and Professional Development, Division 1, Definitions, §748.801; Division 2, Orientation, §748.831, §748.833; Division 3, Pre-Service Experience and Training, §§748.861, 748.863, 748.865, 748.867, 748.869; Division 4, General Pre-Service Training, §§748.881, 748.883, 748.885; Division 5, Pre-Service Training Regarding Emergency Behavior Intervention, §748.901, §748.903; Division 6, Annual Training, §§748.931, 748.933, 748.935, 748.937, 748.939, 748.941, 748.943, 748.945, 748.947, 748.949; Division 7, First-Aid and CPR Certification, §§748.981, 748.983, 748.985, 748.987, 748.989; Subchapter G, Child/Caregiver Ratios, §§748.1001, 748.1003, 748.1005, 748.1007, 748.1009, 748.1011, 748.1013, 748.1015, 748.1017, 748.1019, 748.1021, 748.1023; Subchapter H, Child Rights, §§748.1101, 748.1103, 748.1105, 748.1107, 748.1109, 748.1111, 748.1113, 748.1115, 748.1117, 748.1119; Subchapter I, Service Management, Division 1, Admission, §§748.1201, 748.1203, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1221, 748.1223, 748.1225,

748.1227; Division 2, Emergency Admission, §§748.1261, 748.1263, 748.1265, 748.1267, 748.1269, 748.1271; Division 3, Educational Services, §§748.1301, 748.1303, 748.1305; Division 4, Service Plans, §§748.1331, 748.1333, 748.1335, 748.1337, 748.1339, 748.1341, 748.1343, 748.1345, 748.1347, 748.1349, 748.1351; Division 5, Service Plan Reviews and Updates, §§748.1381, 748.1383, 748.1385, 748.1387, 748.1389; Division 6, Discharge and Transfer Planning, §§748.1431, 748.1433, 748.1435, 748.1437, 748.1439, 748.1441, 748.1443, 748.1445; Division 7, Release of Child, §748.1481; Subchapter J, Child Care, Division 1, Dental Care, §§748.1501, 748.1503, 748.1505; Division 2, Medical Care, §§748.1531, 748.1533, 748.1535, 748.1537, 748.1539, 748.1541, 748.1543, 748.1545, 748.1547, 748.1549, 748.1551; Division 3, Communicable Diseases, §§748.1581, 748.1583, 748.1585; Division 4, Protective Devices, §§748.1611, 748.1613, 748.1615, 748.1617; Division 5, Supportive Devices, §§748.1631, 748.1633, 748.1635; Division 6, Tobacco Use, §748.1661; Division 7, Nutrition and Hydration, §§748.1691, 748.1693, 748.1695, 748.1697, 748.1699, 748.1701, 748.1703, 748.1705, 748.1707, 748.1709; Division 8, Additional Requirements for Infant Care, §§748.1741, 748.1743, 748.1745, 748.1747, 748.1749, 748.1751, 748.1753, 748.1755, 748.1757, 748.1759, 748.1761, 748.1763, 748.1765; Division 9, Additional Requirements for Toddler Care, §§748.1791, 748.1793, 748.1795; Division 10, Additional Requirements for Pregnant Children, §§748.1821, 748.1823, 748.1825; Subchapter K, Operations that Provide Care for Children and Adults, Division 1, Scope, §748.1901; Division 2, General Requirements, §§748.1931, 748.1933, 748.1935, 748.1937, 748.1939, 748.1941, 748.1943, 748.1945; Subchapter L, Medication, Division 1, Administration of Medication, §§748.2001, 748.2003, 748.2005, 748.2007, 748.2009; Division 2, Self-Administration of Medication, §§748.2051, 748.2053; Division 3, Medication Storage and Destruction, §748.2101, §748.2103; Division 4, Medication Records, §748.2151; Division 5, Medication and Label Errors, §§748.2201, 748.2203, 748.2205; Division 6, Side Effects and Adverse Reactions to Medication, §748.2231, §748.2233; Division 7, Use of Psychotropic Medication, §§748.2251, 748.2253, 748.2255, 748.2257, 748.2259, 748.2261; Subchapter M, Discipline and Punishment, §§748.2301, 748.2303, 748.2305, 748.2307, 748.2309, 748.2311; Subchapter N, Emergency Behavior Intervention, Division 1, Definitions, §748.2401; Division 2, Types of Emergency Behavior Intervention That May Be Administered, §§748.2451, 748.2453, 748.2455, 748.2457, 748.2459, 748.2461, 748.2463; Division 3, Orders, §§748.2501, 748.2503, 748.2505, 748.2507; Division 4, Responsibilities During Administration of Any Type of Emergency Behavior Intervention, §748.2551, §748.2553; Division 5, Additional Responsibilities During Administration of a Personal Restraint, §§748.2601, 748.2603, 748.2605; Division 6, Additional Responsibilities During Administration of Seclusion, §748.2651, §748.2653; Division 7, Additional Responsibilities During Administration of a Mechanical Restraint, §§748.2701, 748.2703, 748.2705; Division 8, Successive Use and Combinations of Emergency Behavior Intervention, §§748.2751, 748.2753, 748.2755, 748.2757; Division 9, Time Restrictions for Emergency Behavior Intervention, §§748.2801, 748.2803, 748.2805, 748.2807; Division 10, General Caregiver Responsibilities, Including Documentation, After the Administration of Emergency Behavior Intervention, §§748.2851, 748.2853, 748.2855; Division 11, Triggered Reviews, §§748.2901, 748.2903, 748.2905, 748.2907, 748.2909; Division 12, Overall Operation Evaluation, §748.2951, §748.2953; Subchapter

O, Safety and Emergency Practices, Division 1, Sanitation and Health Practices, §§748.3001, 748.3003, 748.3005, 748.3007, 748.3009, 748.3011, 748.3013, 748.3015, 748.3017, 748.3019, 748.3021; Division 2, Natural Gas and Liquefied Petroleum, §§748.3061, 748.3063, 748.3065; Division 3, Fire Safety Practices, §§748.3101, 748.3103, 748.3105, 748.3107, 748.3109, 748.3111, 748.3113, 748.3115, 748.3117, 748.3119; Division 4, Heating Devices, §748.3161; Division 5, Carbon Monoxide Safety Practices, §§748.3191, 748.3193, 748.3195; Division 6, Emergency Evacuation and Relocation, §§748.3231, 748.3233, 748.3235, 748.3237, 748.3239; Division 7, First-Aid Kits, §748.3271, §748.3273; Subchapter P, Physical Site, Division 1, Grounds and General Requirements, §§748.3301, 748.3303, 748.3305, 748.3307, 748.3309, 748.3311, 748.3313, 748.3315, 748.3317; Division 2, Interior Space, §§748.3351, 748.3353, 748.3355, 748.3357, 748.3359, 748.3361, 748.3363, 748.3365, 748.3367, 748.3369; Division 3, Toilet and Bath Facilities, §§748.3391, 748.3393, 748.3395, 748.3397, 748.3399; Division 4, Poisons, §748.3421; Division 5, Food Preparation, Storage, and Equipment, §748.3441, §748.3443; Division 6, Play Equipment and Safety Requirements, §§748.3471, 748.3473, 748.3475, 748.3477, 748.3479, 748.3481; Division 7, Playground Use Zones, §§748.3521, 748.3523, 748.3525, 748.3527, 748.3529, 748.3531, 748.3533, 748.3535; Division 8, Protective Surfacing, §§748.3561, 748.3563, 748.3565, 748.3567; Division 9, Swimming Pools, Wading/Splashing Pools, and Hot Tubs, §§748.3601, 748.3603, 748.3605, 748.3607; Subchapter Q, Recreation Activities, Division 1, General Requirements, §§748.3701, 748.3703, 748.3705, 748.3707, 748.3709, 748.3711, 748.3713, 748.3715, 748.3717, 748.3719; Division 2, Swimming Activities, §§748.3751, 748.3753, 748.3755, 748.3757, 748.3759, 748.3761, 748.3763, 748.3765, 748.3767; Division 3, Watercraft Activities, §§748.3801, 748.3803, 748.3805, 748.3807; Division 4, Wilderness Hiking and Camping Excursions, §§748.3841, 748.3843, 748.3845, 748.3847, 748.3849, 748.3851, 748.3853, 748.3855, 748.3857, 748.3859, 748.3861; Division 5, Trampoline Use, §748.3891, §748.3893; Division 6, Weapons, Firearms, Explosive Materials, and Projectiles, §§748.3931, 748.3933, 748.3935, 748.3937; Subchapter R, Transportation, Division 1, General Requirements, §§748.4001, 748.4003, 748.4005, 748.4007, 748.4009, 748.4011, 748.4013; Division 2, Safety Restraints, §§748.4041, 748.4043, 748.4045, 748.4047; Division 3, Vehicle and Vehicle Maintenance, §748.4081, §748.4083; Division 4, Transportation Records, §748.4111; Subchapter S, Additional Requirements for Operations That Provide Emergency Care Services, Division 1, Service Management, §§748.4201, 748.4203, 748.4205, 748.4207, 748.4209, 748.4211, 748.4213; Division 2, Admission Assessment, §748.4231; Division 3, Respite Care Services, §§748.4261, 748.4263, 748.4265, 748.4267, 748.4269; Subchapter T, Additional Requirements for Operations That Provide Assessment Services, Division 1, Regulation §748.4301; Division 2, Admission, §748.4331; Division 3, Assessment Plan, §§748.4361, 748.4363, 748.4365, 748.4367, 748.4369, 748.4371; Division 4, Assessment Report, §§748.4391, 748.4393, 748.4395, 748.4397; Subchapter U, Additional Requirements for Operations That Provide Therapeutic Camp Services, Division 1, Definitions, §748.4401, §748.4403; Division 2, Activities Requiring Spotting or Belaying, §748.4431; Division 3, Primitive Camping Excursions, §§748.4461, 748.4463, 748.4465, 748.4467, 748.4469, 748.4471, and 748.4473.

DFPS is required by Chapter 42 of the Human Resources Code to periodically review all minimum standard rules. In

addition, part of the Child Care Licensing Division's (Licensing) business plan is to review, analyze, and update Licensing rules to strengthen the protection of children in out-of-home care and improve an operator's understanding of the rules. In this issue of the *Texas Register*, DFPS is proposing to repeal Chapter 720, 24-Hour Care Licensing, and to replace it with three new chapters, one of which is Chapter 748, General Residential Operations and Residential Treatment Centers.

The existing consolidated minimum standards for residential operations in Chapter 720 are outdated. The standards have not been revised since 1985. Current standards are grouped according to the type of operation where care is provided, e.g. residential treatment center, institutions providing basic care, institutions serving mentally retarded children, halfway houses, etc. There are also additional standards in separate chapters for different types of operations, including standards for emergency shelters and standards for assessment centers. The proposed rules consolidate the minimum standards for all of these operations into a cohesive set of rules that are designed to focus on the needs of the children in care. Many of the proposed changes are due to this consolidation.

In order to update the minimum standards, information has been obtained from providers and provider associations, Child Protective Services (CPS), and Licensing staff. Updates have also been made based on the review of available research and literature relating to the child development field, best practices in child placement, and health and safety practices recommended by experts such as the Consumer Product Safety Commission, American Academy of Pediatrics, and the Texas Department of State Health Services.

The proposed rules will facilitate understanding of the law and Licensing requirements and are written using "plain language" techniques with a question and answer format. Rules that are easy to read and understand will result in higher rates of compliance.

A summary of some of the significant changes found in Chapter 748 follows:

Subchapter A, Purpose and Scope - This subchapter describes applicability of the chapter, which applies to general residential operations and residential treatment centers.

Subchapter B, Definitions and Services - This subchapter describes the services that residential operations may offer. Operations may be licensed to provide any type of service regulated by DFPS and must have operational policies and procedures to ensure children are admitted and served appropriately. This subchapter defines the types of services DFPS regulates as child-care services, treatment services, and programmatic services. Treatment services are designed to treat and/or support children with emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs. Programmatic services include emergency care services, transitional living services, assessment services, and therapeutic camp services. Operations must request and receive approval on the license to provide treatment and programmatic services. These operations may not use respite services and only operations providing emergency care services may provide respite services.

Subchapter C, Organization and Administration - This subchapter requires all operation records to be true, accurate, and complete. Each operation must have a drug testing policy per Senate Bill 6, 79th Legislature, Regular Session, 2005. Persons with a

conflict of interest (family members, paid consultants, etc.) cannot serve as a member of the operation's governing body.

Subchapter D, Reports and Record Keeping - This subchapter includes changes concerning requirements for increased serious incident reporting, including specific time frames for notifying Licensing, a child's parent, and/or law enforcement. Specific and additional requirements are added concerning operation, child, and personnel records, including open, archived, and closed records. These records pertain to both content and storage. Also, documentation must be filed in a child's record within 30 days of the occurrence/event.

Subchapter E, Personnel - This subchapter requires a written professional staffing plan; professional level service provider minimum qualifications and job responsibilities; licensed registered nurse on staff if the operation serves children with primary medical needs; treatment director for an operation that provides treatment services to a significant portion of the children in care at the operation, including minimum qualifications for this position according to the service being provided; specific responsibilities of a caregiver when supervising children; and increased restrictions and requirements for volunteers.

Subchapter F, Training and Professional Development - This subchapter includes changes concerning the requirements for increased pre-service training and annual training for staff, including content and number of hours of training. Pre-service and annual training requirements added include training on emergency behavior intervention, psychotropic medications, and for those caring for infants and toddlers, information on recognizing and preventing shaken baby syndrome, preventing sudden infant death syndrome, and early childhood brain development.

Subchapter G, Child/Caregiver Ratios - This subchapter lowers staff-to-child ratios, particularly during sleeping hours and for young children and children receiving treatment services, and also specifies supervision requirements for children in transitional living programs.

Subchapter H, Child Rights - This subchapter adds specificity regarding child rights, including the right to communicate with service providers in a language, or any other means, that is understandable to the child; the right to be free from discrimination; the right to confidential care and treatment; and the right not to receive unnecessary or excessive medication. This subchapter also includes specific requirements regarding the search of a child or a child's property, and informing a child of his rights.

Subchapter I, Service Management - This subchapter adds requirements for items that must be in the child's record at the time of admission; requires a preliminary service plan within 72 hours of admission for each child; adds specific requirements for the content of children's service plans based on age and special needs; requires each service plan to be complete and implemented within 40 days after you admit the child; requires that a child be informed of his planned discharge at least four days in advance, unless child-placing staff document clinical justification for not providing advance notice; increases requirements for discharge planning and documentation; requires the operation to arrange an appropriate education for each child in the least restrictive setting; requiring the educational operation to be approved by Texas Education Agency (TEA); and lists the requirements regarding an educational program operated by the operation.

Subchapter J, Child Care - This subchapter requires children in an operation to have a vision and hearing screening; adds requirements regarding a child's serious illness or communicable disease; prohibits the use or possession of tobacco products by children and employees inside any operation or inside motor vehicles during transportation; adds requirements regarding feeding children, particularly infants, toddlers, and children with primary medical needs; adds requirements regarding infant care, including diapering, furnishings/equipment, and supervision; adds requirements regarding toddler care, including activities, supervision, and furnishings/equipment; adds requirements related to children in care who are pregnant or parenting; and allows a child to remain in care until age 22 or indefinitely, based on the child's circumstances.

Subchapter K, Operations That Provide Care for Children and Adults - This subchapter includes requirements for operations that care for both children and adults.

Subchapter L, Medication - This subchapter describes the parameters for administering, storing, and destroying medication; increases documentation requirements regarding children's prescription medications; and increases the requirements on providing information to parents regarding the use of psychotropic medications.

Subchapter M, Discipline and Punishment - This subchapter adds prohibited types of punishment, such as pinching and biting, putting anything in or on a child's mouth, placing a child in a dark space, or requiring a child to remain silent or inactive for inappropriately long periods of time.

Subchapter N, Emergency Behavior Intervention - This subchapter requires operation supervisory staff to review each use of emergency behavior intervention within 72 hours of the incident; prohibits prone personal restraints, except as transitional holds that last no longer than one minute; prohibits any personal restraints that twist or place the child's limb(s) behind the child's back; and increases requirements for regularly scheduled evaluations of emergency behavior interventions, both for individual children and for the operation as a whole.

Subchapter O, Safety and Emergency Practices - This subchapter includes new requirements regarding emergency evacuation plans, procedures, and drills; requirements for fire and health inspections; requirements for smoke detectors and carbon monoxide detectors; and requirements for storage of dangerous tools and equipment.

Subchapter P, Physical Site - This subchapter includes new requirements regarding use of audio monitoring devices or video cameras; bathroom location and layout; food and kitchen sanitation; playgrounds, including inspection and maintenance; and swimming pools and pool equipment.

Subchapter Q, Recreation Activities - This subchapter includes new requirements regarding higher risk recreational activities, including staff training and preparation for such activities; swimming and other water activities; camping trips, including preparation, food, shelter, sanitation, and children's health and safety; archery equipment and trampolines; and weapons, firearms, explosive materials, and projectiles.

Subchapter R, Transportation - This subchapter requires that all operation drivers be at least 21 years old, have current automobile insurance, and have a current driver's license to operate the vehicle used to transport children; prohibits children from being transported in the bed of a pick-up truck or while standing on run-

ners or on the hood of any vehicle; requires that all child passenger safety seat systems meet federal standards for crash-tested restraint systems and be properly secured in the vehicle; requires safety precautions for loading and unloading children from a vehicle; allows children in care to transport other children in care if given permission by the service planning team; requires a plan to handle transportation emergencies; and adds specific requirements for overnight trips, including special requirements for out-of-state trips.

Subchapter S, Additional Requirements for Operations That Provide Emergency Care Services - This subchapter requires operations to provide health screenings within 72 hours of admission; discusses time frames for emergency care services; and adds requirements for the provision of respite care for only those programs providing emergency care services.

Subchapter T, Additional Requirements for Operations That Provide Assessment Services - This subchapter clarifies that DFPS only regulates operations that also provide assessment services. Requirements include a determination that must be made regarding admission, and an assessment plan and report must be completed within 30 or 45 days of admission, depending on the age of the child.

Subchapter U, Additional Requirements for Operations That Provide Therapeutic Camp Services - This subchapter describes the eligibility requirements for therapeutic camps services; and adds the requirements for primitive camping excursions, including how long primitive camping excursions may last and how long children must remain at a permanent camp between excursions.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the risk of harm to children will be reduced and quality of care will be improved due to updating standards based on current knowledge and practices. In addition, the standards will be easier to understand, which should encourage voluntary compliance and reduce noncompliance caused by misinterpretation of the rules.

For each of the first five years that the proposed rules are in effect, Ms. Brown has determined there may be an impact to large, small, and micro-businesses that must comply with these rules, namely general residential operations and residential treatment centers. This impact may result in increased cost of services for operations that do not already meet the proposed minimum standards and these increased costs could be passed on to customers, clients, or funding sources.

To assist with evaluating the potential costs, the fiscal impact is stated in terms of cost per \$100 of revenues. It is important to note that, based on survey information, many operations already meet many of the standards being proposed. Other standards will require only a one-time investment, and will not necessarily result in higher recurring costs. Some operations will be grandfathered in for some rules, or will be given additional time to comply. In addition, operations have some flexibility in the way they structure their operation so as to minimize the impact on their costs of operation.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using a combination of survey data, cost research conducted by staff, and assumptions regarding child-care practices. The survey process, as well as certain key assumptions and methodologies, are described in detail below, as these underlie the individual impact calculations for each rule, or set of rules, that are projected to have a fiscal impact on at least some operations.

Minimum Standards Rules Revision Survey of Information (the Survey) and Impact Methodology: The purpose of the fiscal impact survey was to assess how many providers would be potentially impacted by certain rules and the estimated costs if the rules were adopted. The results helped to refine the proposed changes to provide the optimum balance of protection for children without significantly impacting the cost and availability of services.

The survey was conducted electronically in August and September 2005 through an Internet website. Licensed providers were notified by postcard, mailed prior to the beginning of the survey, of the survey dates and Internet website address. Other efforts to make all providers aware of the survey included communications through stakeholder groups and notifications published on agency websites.

A brief follow-up survey was conducted in October 2005 to gather additional information regarding certain rules as a result of comments and other input received since the original survey. Additional data was needed to make an analysis of the fiscal impact of the changes being considered. This survey was also conducted electronically through an Internet website. Providers were notified of this survey via email and also at a public hearing on October 24, 2005, which was held during the period when the survey was open for input. This impact analysis incorporates information from both surveys.

At the same time the fiscal impact survey was released in August, a draft of the rules was placed on the DFPS agency website. The purpose of putting the draft on the website was to help those completing the fiscal impact survey understand the proposed changes so they could furnish appropriate well-informed cost data.

Licensing staff, working with other DFPS staff from the Operations Division and the Financial Services Office, developed the survey. The questions were multiple choice and open-ended responses. Open-ended questions were used when requesting demographics or information, such as cost estimates and/or specific actions that would be taken as a result of a particular proposed rule. The survey included assumptions about which rules would be absorbed in the regular costs incurred by the operations and which would have a potential fiscal impact. Survey questions were not developed for every rule because some rules did not have an identifiable fiscal impact, or the impact was deemed insignificant.

The original survey was available on a DFPS website from August 22, 2005, through September 20, 2005. The supplemental survey was open from October 21, 2005, through October 27, 2005. The response rate for each survey was:

General Residential Operations and Residential Treatment Centers - 55 surveys completed; response rate of 20.29%.

General Residential Operations and Residential Treatment Centers, Supplemental Survey - 30 surveys completed; response rate of 11.07%.

Providers were limited to one survey response each. The operation name was requested to ensure that they were a licensed provider eligible to complete the survey and that no duplicate surveys were received.

For each rule addressed by the survey, an estimate was made of the percent of operations potentially impacted. The percent potentially impacted was calculated by analyzing the responses to the individual survey questions for various indicators.

Annual revenues were calculated from expenditure data at DFPS as adjusted by certain factors. A completion factor was applied to actual Fiscal Year 2005 DFPS payments to each entity as of August 31, 2005, to annualize the total to a projected 12-month period. This amount was then increased proportionately based on survey reported information of the percentage of DFPS enrollment at each entity in order to project revenues from all other sources related to licensed activities. When there were no DFPS payments or child placements, the entity was asked to furnish their annual budget related to licensed activities. Cost per \$100 of revenue was then determined as follows:

$$\text{Estimated annual revenue} / 100 = \text{total number of \$100 revenue in a year}$$

As cost estimates were developed for each rule, the estimate was stated by \$100 of revenue for each entity potentially impacted. These amounts were then averaged to obtain the overall estimated fiscal impact. If a rule would have only a one-time cost, it was assumed that the cost would be absorbed over one year. If a rule could be implemented over multiple years, it was assumed that the cost would be absorbed over the entire implementation period. Finally, if a cost is recurring, it was calculated for one year at a time.

Current providers will be grandfathered for some rules, as long as their license remains valid. There is no estimated fiscal impact for these rules because no current providers are required to comply, and new providers will be subject to the minimum standards that are in effect at the time the business begins operation.

The following is a summary of the rules analyzed for fiscal impact, including the rule number, a description of the rule, assumptions and other information specific to the cost calculations, cost type (one-time, recurring, etc.), the estimated cost per \$100 of revenue, and the percentage of operations potentially impacted.

Fiscal Impact for Proposed §748.561: This rule requires operations to have qualified professional level service providers perform specific activities, including completing an admission assessment and a discharge or transfer summary and determining restrictions on contacts with family imposed on a child. This rule expands the requirement of current rule for the approval of the restrictions and is more specific about when approvals are done and the qualifications of staff to do them. The qualifications and requirements provide for consistency between the child-placing agency rules and are comparable to the requirements for child placement management staff. The cost will be recurring. The estimated average cost is \$2.24 per \$100 of revenue. An estimated 40% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.861: For operations that provide treatment services to more than 25 children or 30% of their children, this section requires all new caregivers to have at least 40 hours of supervised child-care experience in an operation that provides the same type of treatment services. The training must be done prior to being the only caregiver for a group of children.

An experienced caregiver must be physically available to supervise the new caregiver at all times. Current rule requires this only for residential treatment centers. The cost will be recurring. Operations were surveyed to determine how many hours of training and supervised child-care experience they provide for new staff. For those providing less than that required by the rule, a standard supervisor salary of \$18,665 was applied to the average number of new hires times the additional hours needed to calculate the impact of implementing the rule. The estimated average cost is \$0.71 per \$100 of revenue. An estimated 2% of the operations are potentially impacted.

Fiscal Impact for Proposed §§748.863, 748.867, and 748.869: These sections require 16 hours of pre-service training for emergency behavior intervention, unless a new caregiver has been employed and trained within the previous year. A qualified instructor who is certified in a recognized method of emergency behavior intervention must present the training directly to the participants. Current rule has no requirement for pre-service training, nor is there a requirement for training administrative staff. Many children are injured and some die as a result of inappropriate administration of emergency behavior interventions. The cost will be recurring. Operations were asked how many hours of emergency behavior intervention training is included in current pre-service training for new caregivers; how many new caregivers were hired in the past three calendar months that did not meet the conditions to be exempted from emergency behavior intervention pre-service training and would therefore be required to receive the training; to explain how emergency behavior intervention pre-service training is provided; and to estimate the cost of additional hours if they are currently providing less than 16. The estimated average cost is \$0.59 per \$100 of revenue. An estimated 76% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.869 and §748.885: These sections require pre-service training by a pharmacist, licensed physician, or registered nurse before a caregiver is allowed to administer psychotropic medications. The cost will be recurring. Operations were asked what training was done and by whom if their caregivers administered psychotropic medications. There are no current rules for administration and training on administering psychotropic medications. This will ensure that caregivers understand the use of psychotropic medications and their impact on the child. While this is a new rule, it encompasses the current contractual requirement on operations caring for CPS children. The cost per operation was determined by applying an hourly rate for a nurse trainer, estimated at \$20 per hour, to the hours of training hours currently provided. The assumption is that the number of hours offered is adequate and will not change because of this rule; rather the issue is the qualifications of the person conducting the training. The estimated average cost is \$0.01 per \$100 of revenue. An estimated 20% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.931: This section requires that every three months, as part of their annual training, each caregiver must have at least two hours of training specifically related to the emergency behavior intervention techniques allowed by the operation. The current rule requires four hours annually of emergency behavior interventions. This rule ensures caregivers are continually aware of appropriate emergency behavior interventions and this will reduce injuries to children. The cost of implementing this rule depends on many factors, including how many hours are currently offered, the frequency with which this training is offered, the techniques allowed by the operation, the

number of employees needing the training, and travel or other expenses related to the training. The cost will be recurring. Operations were asked to estimate their cost based on their current practice and the factors that will affect them in making any changes that are necessary. The estimated average cost is \$0.54 per \$100 of revenue. An estimated 100% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.933: This section requires that staff working with children who are not caregivers must have annual training. A person who holds a relevant professional license must receive the annual training necessary to maintain that license. As long as the person receives at least 15 hours of annual training, the person does not have to have any additional hours of annual training. If you do not have a relevant professional license, then you are required to receive 30 hours of annual training. The current rule requires 15 hours of training every two years for Licensed Child Care Administrators. The cost will be recurring. Operations were surveyed to obtain information on the number of staff who do not hold a professional license and the training hours required of this staff. Assumptions were made that those holding professional licenses already receive the required training, or any additional hours needed would not be a significant cost factor. An hourly rate of \$16 was used to estimate the cost of training to bring all other staff up to 30 hours a year. The estimated average cost is \$0.16 per \$100 of revenue. An estimated 51% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.941 and §748.945: These sections require that if a caregiver administers psychotropic medication, annual training must include training on psychotropic medications. A licensed physician, a registered nurse, or a pharmacist must conduct the training. There are no current rules requiring this training, however this is consistent with contractual requirements for operations that contract with CPS. The cost will be recurring. Operations were asked whether this was currently included in annual training, and if so, the number of hours provided. Since the rule does not specify a specific number of hours for the training, an assumption was made that what is currently offered is adequate for purposes of cost analysis. A minimum of two hours was used to estimate cost for those not currently requiring this training, and an hourly rate of \$20 was used to calculate the cost of providing a qualified trainer. The estimated average cost is \$0.03 per \$100 of revenue. An estimated 11% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1005: This section states child/caregiver ratios may not be averaged on an operation-wide basis. There must be enough caregivers to meet the child/caregiver ratio for any group of children who are located in the same physical setting. The current rules do not specifically require children of cottage parents to be included in the ratio or prohibit the calculation of ratios on a facility-wide basis. This rule clarifies how caregiver/child ratios should be calculated and most operations are not impacted. The cost will be recurring. Operations were asked to compare this requirement to their current policies and provide an estimate of the number of additional caregivers they would need to comply with the rule. When the need for additional caregivers was indicated, a standard salary of \$18,665 was used to estimate cost. In some cases, operations provided their own estimate of the cost. In those instances, their estimations were used in lieu of a calculated cost, as long as they appeared reasonable. The estimated average cost is \$8.81 per \$100 of revenue. An estimated 13% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1007: This section establishes child/caregiver ratios and stipulates criteria for determining which ratios apply to specific situations. The number of children that a single caregiver can watch during waking hours depends on the age of the children and how many of the children are receiving treatment services. The number of children that a single caregiver can watch during sleeping hours depends on the age of the children, how many of the children are receiving treatment services, and whether the caregiver is awake or sleeping. This is a reduction in the current ratios. The cost will be recurring. Operations were asked their current practices regarding child/caregiver ratios. The ratios provided in the survey responses were then compared to the ratios in the proposed rule, and the operations not in compliance with the proposed rules were identified. A cost estimate was calculated based on how many additional caregivers an operation would need to meet the proposed ratios. The number of additional caregivers was multiplied by a standard caregiver salary of \$18,665 to estimate a total cost. The estimated average cost is \$1.29 per \$100 of revenue. An estimated 31% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1015: This rule states that the child/caregiver ratio includes the children of caregivers who are present with children in care. This rule clarifies how ratios are to be determined. Few operations are impacted, although the impact to those few is significant. The cost will be recurring. Operations were asked the affect of this rule on their operations. Since there are options on how to achieve compliance, they were asked to describe how they would implement it and provide a cost estimate of those actions. The estimated average cost is \$6.59 per \$100 of revenue. An estimated 7% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1101: This section adds to the list of child rights the right to be able to communicate in a language, or any other means, that is understandable to the child. This could include having a plan for an interpreter or having at least one person at the operation at all times who is able to communicate with the child. Current rules do not address this as a right, and this rule incorporates the Federal regulation that is part of Title VI of the Civil Rights Act of 1964. The cost will be recurring. Operations were asked to estimate the cost of providing services in the manner required. The estimated average cost is \$0.36 per \$100 of revenue. An estimated 11% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1331: This section requires a preliminary service plan be completed within 72 hours of admission for children. This is a current rule for residential treatment centers and is required contractually by CPS for all children in foster care at the specialized level of care. The new rule requires a more detailed plan for children receiving treatment services. All other children would need a preliminary service plan developed within 72 hours that simply addresses their immediate needs--the rule does not specify who must develop this plan. The cost will be recurring. Operations were asked to estimate the additional number of hours per child that would be needed to implement this rule, and any other additional costs associated with the requirement. A child placement staff hourly salary rate of \$17 was applied to the number of additional hours needed per child. Multiplying this by the estimated number of new admissions affected by the 72-hour requirement resulted in an estimated average cost is \$0.19 per \$100 of revenue. An estimated 22% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1337: This section requires for a child 13 years old or older, the service plan must contain a plan for educating the child on healthy interpersonal relationships, healthy boundaries, pro-social communication skills, sexually transmitted diseases, and human reproduction. This is a new rule and ensures that, since the agency is acting in a parental role, children are given necessary information about physical and emotional development. The cost will be recurring. Operations provided estimates for their expected costs of implementing this rule. Costs ranged from \$600 to \$48,000 per operation. The estimated average cost is \$0.49 per \$100 of revenue. An estimated 71% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1339: For the initial service plans for children receiving treatment services, at least two additional professionals from a list of seven possible professionals whose qualifications are related to the treatment services provided must be involved in the development of the service plans. Current rules for operations providing treatment services do not specify who must be involved in the development of the initial service plan. Ensuring these staff are involved in the service planning ensures the plan is appropriate for the health, safety, and treatment of the child. The cost will be recurring. Operations were asked to estimate the cost per plan for implementing this proposed rule. The cost per plan was then multiplied by an estimated number of annual new admissions subject to the rule. The estimated average cost is \$1.18 per \$100 of revenue. An estimated 33% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1437: This section requires documentation in the child's record at the time of a planned discharge or transfer to include: (1) a transfer/discharge summary showing services provided to the child, assessment of remaining needs, and recommendations about the services to meet those needs; (2) the date and circumstances of the discharge or transfer; (3) the name, address, and relationship of the person to whom the child is discharged or transferred unless the child legally consents to his discharge; (4) transfer/discharge medications and/or prescriptions for medications; (5) support resources for the child, including telephone numbers and addresses; and (6) aftercare plans and recommendations, including upcoming appointments. There is no current rule requiring that transfer summaries be done, and the rules for discharge summaries are not this specific. Children often transfer within or between operations as their needs change, so this ensures new caregivers and service providers are aware of the child's needs. The cost will be recurring. Operations provided cost estimates ranging from \$0 to \$43,000, but the estimated average cost is \$0.49 per \$100 of revenue. An estimated 74% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.1821: This section requires operations to ensure a pregnant child receives nutritional counseling and guidance and this must be documented in the child's record. This is a new rule that is necessary since teen mothers are often not aware of their own nutritional needs or the nutritional needs of their unborn child. This rule ensures some attempt is made to provide for the health and safety of the mother and child. Operations have a variety of options in how to ensure this counseling is offered. The cost will be recurring. Operations provided estimates of the cost of complying with this rule. These estimates included contracting with qualified individuals to deliver these services or transporting the child to obtain services elsewhere. The estimated average cost is \$1.03 per \$100 of revenue. An estimated 11% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.2851: This section requires caregivers involved in the emergency behavior intervention of a child to debrief with each other concerning the incident immediately, or as soon as possible, after the situation has stabilized and document the debriefing in the child's record. Caregivers involved in the emergency behavior intervention of a child must also make every effort to debrief with other children in care who witness the incident. This is a new rule that is supported by all national standard organizations. The cost will be recurring. Operations were asked whether they were in compliance with all, or any part, of this rule and to obtain an estimate of the cost of implementing the rule. The estimated average cost is \$0.26 per \$100 of revenue. An estimated 47% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.2951 and §748.2953: These sections require operations to do an annual evaluation of emergency behavior interventions and to collect and document aggregate numbers of behavior interventions reported quarterly by type of intervention. The current rule requires operations to include an evaluation of emergency behavior interventions as part of an annual overall evaluation and to focus on the frequency, patterns, and effectiveness of specific emergency behavior interventions. The requirement to collect numbers quarterly is new. The cost will be recurring. Operations were asked the frequency of when these evaluations were being done, and to provide a cost estimate for implementing these rules. The estimated average cost is \$0.30 per \$100 of revenue. An estimated 29% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3019: This section allows operations to treat for insect, rodent, and other pests only if certified by the Structural Pest Control Board (SPCB) as a non-commercial applicator. Otherwise, the operations must use a commercial pest control business licensed by the SPCB. Current rule only requires appropriate measures to keep the operation free of rodents, insects, and stray animals. Operations were asked whether they were currently obtaining pest control services through one of the methods described in this rule. Those who were not were asked which they would most likely use if required to use one of these methods. Cost estimates for contracting with commercial pest control business licensed by the SPCB were researched, but could not be obtained due to the highly customized nature of these services. Costs vary depending on the type of pest problem and the size of the operation. Information on the SPCB website provides an estimated cost for a SPBC noncommercial applicators license, equipment, and other start-up costs at \$2,000 to \$3,000, with ongoing annual costs at approximately \$2,000. Using this data to determine the fiscal impact of the rule results in an estimated average costs \$0.26 per \$100 of revenue for the initial year and \$0.20 per \$100 of revenue in subsequent years. An estimated 5% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3191: This section requires carbon monoxide detectors if there are natural gas appliances in the operation. This is a new rule that is necessary for the health and safety of children. The cost will be recurring. Questions were asked regarding whether operations needed additional carbon monoxide detectors and if so, how many. Research placed the average cost of a detector at \$36.85. This amount was multiplied by the number of additional detectors needed to arrive at an estimated average cost of \$0.13 per \$100 of revenue. An estimated 41% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3303: This section requires living quarters, recreation areas, dining areas, bathrooms, bedrooms, and kitchens be ventilated by at least one operable window or mechanical ventilation system. This is a new rule that impacts a very small number of operations. This is considered to be a one-time cost. Operations were asked to estimate the cost to implement this rule. The estimated average cost is \$0.36 per \$100 of revenue. An estimated 5% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3305: This section requires each ramp, stairway, and steps exceeding two steps to have a well-secured handrail and stairs to have a minimum width of 36 inches. Each porch or deck that has over an 18-inch drop must have a well-secured railing. If a door opens directly to a stairway, the door must be a minimum of 34 inches wide. There must be a landing between the door and the stairs that is wide enough to allow the door to open and a person to safely step onto the landing while closing the door. This is a new rule that will reduce injuries from falls and accidents. This is considered to be a one-time cost. Operations were asked to provide a cost estimate for bringing their buildings into compliance with the requirements. The estimated average cost is \$1.22 per \$100 of revenue. An estimated 17% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3309: This section requires an operation to have an operable telephone with an outside line that is accessible to employees in emergencies. This phone must have a listed telephone number and not be a coin-operated phone. Also, the operation must have an internal communication system to allow employees to contact other employees in the operation for assistance in an emergency or as needed. This is a new rule to ensure adequate access to communication for emergency situations. This is considered to be a one-time cost. Operations were asked compare their phones and internal communications systems to the requirements of the rule, and provide a cost estimate for bringing them into compliance. The estimated average cost is \$0.45 per \$100 of revenue. An estimated 5% of the operations are potentially impacted.

Fiscal Impact for Rule §748.3369: This section requires that bunk beds (1) must only consist of double-deck beds; (2) must allow enough space in between the bed and the ceiling for a child to sit up in bed; (3) must be equipped with a securely attached ladder capable of supporting an employee and child; and (4) if it is more than 30 inches above the floor, it must be equipped with securely attached safety bedrails along the partial lengths of the bed on each side with an opening to allow a child to get in and out of bed. The top of the safety rail must be no less than five inches above the top of the mattress. Bunk beds securely attached to a wall on one side may use the wall as one of the required guardrails. This is a new rule that meets recommendations of the Consumer Product Safety Commission. This is considered to be a one-time cost. Operations were asked to provide a cost estimate for replacing or modifying beds in order to implement this rule. Cost estimates ranged from \$0 to \$6,000 with an estimated average cost is \$0.16 per \$100 of revenue. An estimated 24% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3395: This section requires a hand-washing sink to be adjacent to all toilet operations. This is a new rule that impacts few operations. The cost of implementing this rule could vary, depending on the number of toilet operations without sinks and the structural and plumbing issues involved with installing sinks. This is considered to be a one-time cost.

Operations were surveyed for a cost estimate. Cost estimates ranged from \$1,500 to \$13,345 with an estimated average cost is \$0.09 per \$100 of revenue. An estimated 5% of the operations are potentially impacted.

Fiscal Impact for Proposed §748.3757: This rule establishes child/caregiver ratios for swimming activities. Current rule makes no distinction for child/caregiver ratios for different activities. The cost will be recurring. Operations were asked how they currently manage child/caregiver ratios during swimming activities. If they are taking no steps beyond simply maintaining regular non-swimming ratios, the assumption is made that additional caregivers would be needed to comply with the rule. The number and cost of additional caregivers is calculated based on the numbers and ages of children in care, an assumption that all are involved in swimming activities for at least three months a year, half the additional caregivers will be part-time or volunteers, and a standard cost of a caregiver's salary, which is estimated to be \$18,665. Total estimated costs per individual agency ranged from \$0 to \$40,828. Based on survey data and this methodology, an estimated average cost is \$0.21 per \$100 of revenue. An estimated 69% of the operations are potentially impacted. Increased use of volunteers beyond that assumed in the analysis would further reduce the cost and could potentially eliminate it altogether.

Fiscal Impact for Proposed §748.3765: This section requires rescue equipment be available at the site if swimming is permitted in a river, pond, or lake. These are new rules that could be met with a minimal cost. The cost will be recurring. Operations were asked whether they permit swimming activities in a river, pond, or lake. Those who do, and plan to continue doing so were asked to provide a cost estimate of ensuring appropriate rescue equipment is always available at the site where the swimming activities occur. The estimated average cost is \$0.01 per \$100 of revenue. An estimated 19% of the operations are potentially impacted.

Questions about the content of the proposal may be directed to Lizet Alaniz at (512) 438-4538 in DFPS's Licensing Division. Electronic comments may be submitted to rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-330, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DFPS will hold a public hearing on the proposal on Thursday, March 23, 2006, from 2:00 p.m. until 6:00 p.m. in the John H. Winters Building Public Hearing Room, 125-E, 701 West 51st Street, Austin, Texas. Persons with disabilities planning to attend this meeting who may need auxiliary aids or services should contact Amy Chandler at (512) 438-3134 by March 20, 2006, so appropriate arrangements can be made.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.1, §748.3

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1. What is the purpose of this chapter?

The purpose of this chapter is to set forth rules that apply to General Residential Operations and Residential Treatment Centers.

§748.3. Who is responsible for complying with the rules of this chapter?

The permit holder must ensure compliance with the rules in this chapter at all times, with the exception of those rules identified for specific types of services that your operation does not offer. For example, if we grant you a permit to offer emergency care services only, you do not have to comply with rules that apply to treatment services for a child with an emotional disorder, treatment services for a child with mental retardation, or a transitional living program; however, you must comply with all other applicable rules of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601185

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.41, §748.43

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.41. What do certain pronouns mean in this chapter?

The following words have the following meanings in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Department of Family and Protective Services (DFPS).

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by the Texas Higher Education Coordinating Board or an accrediting agency recognized by the Texas Higher Education Coordinating Board.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, sociocultural background, and community setting.

(4) Adult--A person 18 years old or older.

(5) Caregiver--A person counted in the child/caregiver ratio, whose duties include the direct care, supervision, guidance, and protection of a child. This does not include a contract service provider who:

(A) Provides a specific type of service to your operation for a limited number of hours per week or month; or

(B) Works with one particular child.

(6) Certified lifeguard--A person who has been trained in rescue techniques, life saving, and water safety by a qualified instructor from a recognized organization that awards a certificate upon successful completion of the training. A certified lifeguard ensures the safety of persons by preventing and responding to water related emergencies.

(7) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(8) Child in care--A child or a young adult who is currently admitted as a resident of a general residential operation or residential treatment center, regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, he is considered a child in care.

(9) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(10) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(11) Days--Calendar days, unless otherwise stated.

(12) De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(13) Department--The Department of Family and Protective Services (DFPS).

(14) Diligent effort--The reasonable diligence and skill that must be exercised by a qualified professional in a particular specialty, which must be commensurate with the duty to be performed and the

individual circumstances of the case and qualifications and skills of other parties involved.

(15) Discipline--Guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(16) Disinfecting solution--A disinfecting solution may be:

(A) A self-made solution, prepared as follows:

(i) One tablespoon of regular strength liquid household chlorine bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or

(ii) One-fourth cup of regular strength liquid household chlorine bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or

(B) A commercial product that meets the Environmental Protection Agency's (EPA's) standards for "hospital grade" germicides (solutions that kill germs) that you must use according to label directions.

(17) Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(18) Field trip--A group activity conducted away from the operation.

(19) Food service--The preparation or serving of meals or snacks.

(20) Full-time--At least 30 hours per week.

(21) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(22) General Residential Operation--A residential child-care operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services and/or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, operations serving children with mental retardation, and halfway houses.

(23) Group of children--Children assigned to a specific caregiver or caregivers. Generally, the group stays with the assigned caregiver(s) throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(24) Health-care professional--A licensed physician, licensed or registered nurse, or other licensed medical personnel providing comprehensive preventive, diagnostic, or therapeutic medical care to the child. This does not include medical doctors or medical personnel where medical care and contraindications to medical care are outside the scope of the licensed practice.

(25) Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(26) Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no im-

mediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away if under 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;
or

(B) Verbal threats or verbal attacks.

(27) Infant--A child from birth through 17 months.

(28) Livestock--An animal raised for human consumption or an equine animal.

(29) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(30) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(31) Non-mobile--A child that is not able to move from place to place, even with assistance.

(32) Operation--General residential operations and residential treatment centers.

(33) Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(34) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(35) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(36) Regularly--On a recurring, scheduled basis.

(37) Residential Treatment Center (RTC)--A residential child-care operation that exclusively provides care and treatment services for emotional disorders for 13 or more children up to the age of 18 years.

(38) Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least 10 minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(39) School-age child--A child five years old or older who will attend school in August or September of that year.

(40) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(41) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(42) State or local fire marshal--A fire official designated by the city, county, or state government.

(43) State or local sanitation official--A sanitation official designated by the city, county, or state government that is trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.

(44) Substantial bodily harm--Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(45) Toddler--A child from 18 months through 35 months.

(46) Treatment director--The person responsible for the overall treatment program providing treatment services.

(47) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(48) Volunteer--A person who provides services to an operation without monetary compensation.

(49) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(50) Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601186

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SERVICES

40 TAC §§748.61, 748.63, 748.65, 748.67, 748.69, 748.71, 748.73, 748.75

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.61. What types of services does Licensing regulate?

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children with:

(A) Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) A Global Assessment Functioning of 50 or below;

(ii) A current DSM diagnosis;

(iii) Major self-injurious actions, including recent suicide attempts;

(iv) Difficulties that present a significant risk of harm to self or others, including frequent or unpredictable physical aggression; or

(v) A primary diagnosis of substance abuse or dependency and severe impairment because of the substance abuse;

(B) Mental Retardation, who have an intellectual functioning of 70 or below and are characterized by prominent, significant deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder) characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; and

(v) Multiple physical abilities including sensory impairments; or

(D) Primary Medical Needs, who cannot live without mechanical supports or the services of others because of non-temporary, life-threatening conditions, including the:

(i) Inability to maintain an open airway without assistance. This does not include the use of inhalers for asthma;

(ii) Inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) Use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(3) Additional Programmatic Services, which include:

(A) Emergency Care Services--A specialized type of child-care services designed and offered to provide short-term child care to children who, upon admission, are in an emergency as defined in §748.1203(b) of this title (relating to What children may I admit?) and for whom an appropriate placement cannot be obtained or cannot be determined without further assessment;

(B) Transitional Living Program--A residential services program designed to serve children 16 years old or older for whom the service or treatment goal is basic life skills development toward independent living. A transitional living program includes basic life skills training and the opportunity for children to practice those skills. A transitional living program is not an independent living program;

(C) Assessment Services--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained in order to facilitate service planning; and

(D) Therapeutic Camp Services--A camping program to augment an operation's treatment services with an experiential curriculum exclusively for a child with an emotional disorder who has difficulty functioning in his home, school, or community. Therapeutic camp services are only available to children 13 years old and older.

§748.63. Can I provide each type of service that Licensing regulates?

You may provide each type of service that we regulate under the following conditions:

(1) On your permit, we list the type of service that you have been approved to provide; and

(2) Your operational policies and procedures ensure:

(A) Children are admitted appropriately;

(B) The needs of all children in care are met;

(C) Children are appropriately supervised;

(D) Children are protected from one another, if appropriate; and

(E) You meet the applicable rules of this chapter.

§748.65. What children are eligible to participate in a transitional living program?

For a child to be eligible to participate in a transitional living program, the child must:

(1) Be 14 years old or older; and

(2) Not be receiving therapeutic camp services.

§748.67. What are the requirements for a transitional living program?

A transitional living program must have a training program for children that develops competency in the following areas:

(1) Health, general safety, and fire safety practices;

(2) Money management;

(3) Transportation skills; and

(4) Child health and safety, child development, and parenting skills, if the child is a parent of a child living with him.

§748.69. What is an "independent living program"?

An "independent living program" is a program that provides case management services to a child who lives independently, without supervision and child/caregiver ratio, and the constant presence of an on-site caregiver.

§748.71. May I have an independent living program?

You may not have an independent living program at your operation.

§748.73. What is "respite child-care"?

Respite child-care is a planned alternative 24-hour care that an operation provides for a child as part of the regulated child care.

§748.75. May I use or provide respite care services?

Only general residential operations that offer emergency care services may provide respite care services. Other operations may not provide respite care services, and no operation may use respite care services. The purpose of respite care services is to provide relief to a child's biological or foster parent, not an employee. Respite for an employee is provided through time off, vacations, holidays, and sick leave.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601187

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.101. What are my responsibilities as the permit holder before I begin operating?

Before you begin operating, you are responsible for:

- (1) Ensuring that your operation is legally established to operate within Texas and is complying with all applicable statutes;
- (2) Submitting documentation to us that proves the legal basis of your operation;
- (3) Establishing the governing body of the operation;

(4) Submitting documentation to us on the ownership of the operation. This includes names, addresses, titles, and telephone numbers for the following persons:

(A) For corporations, the officers and/or the executive committee of the governing body;

(B) For jointly or individually owned operations, the partners or owners; or

(C) For associations, the persons and/or interests represented by the association;

(5) Having a governing body that is responsible for, and has authority over, the policies and activities of the operation;

(6) Having policies that clearly state the responsibilities of the governing body; and

(7) Developing operational policies and procedures that comply with or exceed the rules specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws.

§748.103. What are my operational responsibilities as the permit holder?

When you begin operating, you must:

(1) Designate a full-time child-care administrator who meets the minimum qualifications of §748.531 of this title (relating to What qualifications must a child-care administrator meet?);

(2) Operate according to the written policies and procedures adopted by the governing body;

(3) Maintain true, current, accurate, and complete records at your operation for us to review;

(4) Ensure that all required documentation is current, accurate, and complete;

(5) Allow us to inspect your operation during its hours of operation;

(6) Display your permit at the operation;

(7) Observe the conditions of your permit;

(8) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or operation space. If you offer more than one type of service, you must determine and document that no conflict exists;

(9) Maintain liability insurance as required by the Human Resources Code, §42.049;

(10) Comply with Chapters 42 and 43 of the Human Resources Code and the rules of this chapter, and all other applicable laws and rules of the Texas Administrative Code;

(11) Prior to implementing any changes, inform us of any changes to the plan you developed under §748.101 of this title (relating to "What are my responsibilities as the permit holder before I begin operating?");

(12) Prepare the annual budget and controlling expenditures to ensure the needs of the children are met; and

(13) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a prohibited controlling person.

§748.105. What responsibilities do I have for personnel policies and procedures?

You must:

(1) Develop a written organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Develop written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Develop written policies on the training requirements for employees;

(4) Ensure that personnel policies comply with personnel requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) Report or ensure your employees report suspected abuse, neglect, or exploitation as required by the Texas Family Code, §261.401;

(6) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality; and

(7) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

§748.107. What must my conflict of interest policies include?

Your conflict of interest policies must include a code of conduct on the relationship between employees, contract service providers, children in placement, and children's families, including entering into independent financial relationships or transactions with an employee.

§748.109. May I exceed my operation capacity?

No, the number of children in your care must not exceed the capacity stated on your permit. For the purpose of determining whether you exceed your capacity, the number of children in your care includes a caregiver's own children who are at the operation, and any children receiving respite care services at the operation providing emergency care services.

§748.111. May I provide child day care services?

You may provide child day care services under the following conditions:

(1) You don't provide treatment services to children with emotional disorders;

(2) You care for and supervise children who receive day care services separately from the children receiving residential services; and

(3) You have separate administrative employees and caregivers for each program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601188

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. GOVERNING BODY

40 TAC §748.131, §748.133

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.131. What are the specific responsibilities of the governing body?

The governing body is responsible for:

(1) Ensuring the operation remains fiscally sound;

(2) Overseeing and ensuring the management of the operation's services and programs in compliance with your policies;

(3) Approving and having authority over the operational policies and activities which must comply with rules of this chapter;

(4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;

(5) Ensuring that persons employed by or working at the operation, family members, paid consultants, or others who benefit financially from the operation, such as subcontractors or vendors, do not comprise a majority of the voting members of the governing body;

(A) Operations that are granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and

(B) Operations that are granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph; and

(6) Carrying out governing body responsibilities assigned in the policies and procedures.

§748.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

You must provide to us in writing any change in:

Figure: 40 TAC §748.133

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601189

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §748.161, §748.163

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.161. What are my fiscal requirements?

You must:

- (1) Submit documentation of a 12-month budget of income and expenses to us with the application for a new permit;
- (2) Submit documentation of reserve funds or available credit at least equal to operating costs for the first three months of operation to us with the application for a new permit;
- (3) Have predictable funds sufficient for the first year of operation;
- (4) Demonstrate at all times that you have or will have sufficient funds to provide appropriate services for all children in care; and
- (5) Account for a child's money separately from the funds of the operation. No child's personal earnings, allowances, or gifts may be used to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give the child's money to the child, parent, or next placement upon discharge.

§748.163. How often must I have a professional audit?

You must have a professional audit completed annually and make it available for our review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601190

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. REQUIRED POSTINGS

40 TAC §748.191

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.191. What items must I post at my operation?

The items listed below must be posted in a prominent and publicly accessible place where employees, children, parents, and others may easily view them at all times:

- (1) Your permit;
- (2) The Licensing notice *Keeping Children Safe*;
- (3) Emergency and evacuation relocation plans posted in each building and living quarters used by children;
- (4) The schedule for daily, routine activities for children in care;
- (5) The following telephone numbers and information within reach of each telephone. If the operation uses cordless or cellular phones, these same numbers must be posted in the office area in each building or living quarters of the operation or on the phone handset:
 - (A) 911 or, if 911 is not available in your area, the numbers for:
 - (i) Emergency medical services;
 - (ii) Law enforcement; and
 - (iii) Fire department;
 - (B) Poison control;
 - (C) Child Abuse Hotline; and
 - (D) The operation's name, address, and telephone number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601191

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. POLICIES AND PROCEDURES

40 TAC §§748.231, 748.233, 748.235, 748.237, 748.239

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.231. What are the general requirements for my operation's policies?

(a) The requirements for policies only apply to the operation's policies that are required or governed by this chapter.

(b) The policies must be written and they must indicate the approval of the governing body, date of approval, and effective date.

(c) The policies must be clearly stated and comply with the rules of this chapter.

(d) The governing body must approve the policies.

(e) All employees must be aware of and follow your policies and procedures. A copy of your policies and procedures must be maintained at the operation and available for employees' review.

(f) All policies must be available for review by our staff and your clients, upon request.

(g) You must report any significant change to the policies to us at least seven days before implementing the change.

(h) You must maintain copies of all current and previous policies for at least two years.

§748.233. What are the requirements for my admission policies?

(a) Your admission policies must:

(1) Have a program statement that describes the program's goals, the services provided, and the population of children served by the program;

(2) Describe the specific characteristics of children the program will serve, such as the age range, gender, and needs of children served; and

(3) Indicate whether you will admit children on an emergency basis.

(b) If you provide treatment services, you must have admission policies describing the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that your program is designed to treat.

§748.235. What child-care policies must I develop?

You must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;

(3) The child's rights to correspond by telephone with family members and friends;

(4) The child's rights to receive and give gifts to family, friends, employees, or other children in care, including any restrictions on gifts;

(5) Personal possessions a child is or is not allowed to have;

(6) Emergency behavior intervention techniques;

(7) Discipline policies, including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:

(A) Guide employees in methods used for discipline of a child;

(B) Include measures for positive responses to appropriate behavior;

(C) Make clear that discipline of any type is inappropriate and not permitted for infants and toddlers; and

(D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;

(8) Any religious program or activity that you offer and whether you require participation by children, if applicable;

(9) Transitional living policies, if you offer such a program;

(10) The plans for meeting the educational needs of each child, including your educational program and required participation by children, if applicable;

(11) When trips with caregivers away from the operation are allowed and what protocols will be used;

(12) Program expectations and rules for children;

(13) Child grievance procedures;

(14) The type and frequency of reports to parents;

(15) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(16) Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child; and

(17) Your plan for providing health-care services to a child with primary medical needs.

§748.237. What emergency behavior intervention policies must I develop?

At a minimum, you must develop written emergency behavior intervention policies to implement the requirements in Subchapter N of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions, including risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) How you will meet the following requirements:

(A) Post the emergency behavior interventions that you allow in a place where the children and clients can view them, or at admission, provide the children and clients with a personal copy of the operation's emergency behavior intervention policies;

(B) During admission, explain and document the following to a child in a manner that the child can understand:

(i) Who can use emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you authorize;

(v) When the use of emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments on any emergency behavior intervention; and

(ix) The process for making comments on any emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which he was a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(C) At admission, requirements for obtaining each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process, and revisit this information with the child and caregivers during each post emergency behavior intervention discussion;

(6) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the need for the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the operation; or

(B) A client or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the operation.

§748.239. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include volunteer job descriptions and/or responsibilities;

(2) Address volunteer qualifications, screening and selection procedures, and orientation and training programs; and

(3) Address supervision of volunteers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601192

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. SERIOUS INCIDENT REPORTS

40 TAC §§748.301, 748.303, 748.305, 748.307, 748.309, 748.311, 748.313, 748.315

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and Texas Family Code, §261.410.

§748.301. What is a serious incident?

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child.

§748.303. When must I report and document a serious incident involving a child in my care?

(a) You must report and document the following types of serious incidents. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §748.303(a)

(b) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident. You do have to report the incident to law enforcement, as outlined in the chart above. You also have to report the incident to the parents, if the adult resident is not capable of making decisions about his own care.

§748.305. What constitutes a suicide attempt by a child?

A suicide attempt includes a child's attempt to take his own life using means or methods for causing his death, including a means or method that the child believes is capable of causing his death.

§748.307. When must I report a serious incident involving my operation, an employee, a professional level service provider, or a volunteer?
You must report and document the following types of serious incidents to the following entities within the specified time frame:

Figure: 40 TAC §748.307

§748.309. How do I report a serious incident to Licensing?

(a) Serious incidents that are required to be reported in writing must be forwarded to your Licensing representative (See §748.307 (3), (4), (5), and (10) of this title (relating to When must I report a serious incident involving my operation, an employee, a professional level service provider, or a volunteer?)); and

(b) All other serious incident reports must be made to the Child Abuse Hotline.

§748.311. How must I document a serious incident?

A serious incident must be documented in a written report that includes the following information:

- (1) The name of the operation, physical address, and telephone number;
- (2) The time and date of the incident;
- (3) The name, age, gender, and date of admission of the child or children involved;
- (4) The names of all adults involved and their role in relation to the child(ren);
- (5) The names or other means of identifying witnesses to the incident, if any;
- (6) The nature of the incident;
- (7) The circumstances surrounding the incident;
- (8) Interventions made during and after the incident, such as medical interventions, contacts made, and other follow-up actions;
- (9) The treating licensed health-care professional's name, findings, and treatment, if any; and
- (10) The resolution of the incident.

§748.313. What additional documentation must I include with a written serious incident report?

You must include the following additional documentation with a written serious incident report, as applicable:

Figure: 40 TAC §748.313

§748.315. Where must I keep incident reports?

(a) You must keep the incident reports at a place in the operation where they are easily accessible to caregivers and to us for review.

(b) You must permit Licensing to make a copy of incident reports, as requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601193

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. OPERATION RECORDS

40 TAC §748.341

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.341. If I keep electronic records, what procedures must I have for those records?

(a) If you keep electronic records, you must develop procedures that address what must be in the external paper file and what can be in the electronic file.

(b) You must limit access to your electronic files to:

(1) Persons within your operation authorized to see specific information; and

(2) Others outside of your operation authorized by law to have access to specific information.

(c) You must develop policies that address the following:

(1) Computer security systems, including confidentiality, passwords, and employee procedures to ensure security of the system;

(2) Requirements for routine back up of data; and

(3) Anti-virus protection systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601194

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PERSONNEL RECORDS

40 TAC §748.361, §748.363

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.361. Where must I maintain personnel records?

(a) You must maintain active personnel records at the operation.

(b) You must maintain archived personnel records at the operation and/or in a designated location, as long as they are available for our review within 24 hours.

(c) You may archive entire closed personnel records electronically.

(d) Your system for maintaining all personnel records must be uniform throughout the operation.

(e) You must maintain a master list of active and archived personnel records and their location in the main office of the operation.

§748.363. What information must the personnel record of an employee include?

For each employee or caregiver, the personnel record must include:

(1) Documentation showing the date of employment;

(2) Documentation showing how the person meets the minimum age and qualifications for the position;

(3) A current job description;

(4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(5) A copy of a health card or licensed health-care professional's statement verifying the person is free of active tuberculosis, if required by the regional Department of State Health Services TB program or local health authority, before having contact with children in care (see Division 3 of Subchapter J of this chapter (relating to Communicable Diseases));

(6) A notarized Licensing Affidavit for Applicants for Employment form as specified in Human Resources Code, §42.059;

(7) A statement signed and dated by the employee or caregiver that he has read a copy of the:

(A) Operational policies; and

(B) Personnel policies;

(8) A statement signed and dated by the employee or caregiver indicating that he must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and to the operation's administrator or administrator's designee;

(9) Proof of request for background checks;

(10) A copy of the valid driver's license for each person who transports a child;

(11) A record of training and training hours;

(12) Any documentation of the person's tenure with the operation; and

(13) The date and reason for the person's separation, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601196

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. CHILD RECORDS

40 TAC §§748.391, 748.393, 748.395, 748.397, 748.399, 748.401

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.391. What is an active child record?

An active child record consists of the child's most recent 12 months of service.

§748.393. How must I maintain an active child record?

(a) You must keep active child records at the operation where the child is receiving services.

(b) On an on-going basis, you must ensure that each child's record:

(1) Includes the child's full name and another method of identifying the child, such as a client number;

(2) Includes documentation of known allergies on the exterior of the child's record or in another place where the information is clearly visible to persons with access to the record;

(3) Includes the date of each data entry and the signature of the employee who makes the data entry;

(4) Is kept accurate and current;

(5) Is locked and kept in a safe location; and

(6) Is kept confidential as required by law.

§748.395. How current must a child's record be?

For a child's record to be current, you must document casework services in the child's record no later than 30 days after the occurrence or event unless otherwise specified in this chapter. Casework services include, but are not limited to, medical and dental services, therapist notes and reports, and progress notes.

§748.397. Who must consent to the release of a child's record?

Unless you are releasing the record to the parents or to us, you may not release any portion of a child's record to any agency, organization, or individual without the written consent of the person legally authorized to consent to the release.

§748.399. Must I make records available for Licensing to review?

(a) You must make all active records available for our immediate review and reproduction.

(b) We must have reasonable access to your storage and file areas in order to monitor your record keeping.

§748.401. How must I maintain a child's record that is not active?

These records must be available for our review within 24 hours. Otherwise, the records may be archived electronically or kept anywhere and in any manner, as long as they are safe from damage or destruction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601197

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. RECORD RETENTION

40 TAC §§748.431, 748.433, 748.435

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.431. How long must I maintain personnel records?

(a) You must maintain annual training records for current personnel for the last full training year and current training year.

(b) With the exception of subsection (a) of this section, you must maintain personnel records for a year after an employee's last day of employment or until any investigation involving the employee is resolved, whichever is longer.

§748.433. How long must I maintain child records?

You must maintain a child's complete record from admittance to discharge for two years from the date of discharge, or until the resolution of any investigation of a serious incident that occurred while the child was in care at your operation, whichever is longer.

§748.435. What procedures must I have for protecting records?

You must have procedures for protecting electronic and paper records from loss and unauthorized access.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601198

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER E. PERSONNEL

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §§748.501, 748.503, 748.505, 748.507, 748.509, 748.511

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.501. What must my written professional staffing plan include?

Your written professional staffing plan must:

(1) Demonstrate that the number, qualifications, and responsibilities of professional positions, including the child-care administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(2) Describe in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services;

(3) Document your ability to have enough caregivers, including caregivers throughout the night, to supervise children 24 hours a day;

(4) Document your staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies; and

(5) Describe how employees are assigned responsibilities for providing services.

§748.503. Does education received outside of the United States count toward educational qualifications?

Yes, however you must provide supporting information indicating that the education is equivalent to the minimum educational qualifications for the position for which the person is applying. Documents written in a foreign language must be translated into English.

§748.505. What minimum qualifications must all employees meet?

(a) An employee's behavior or health status must not present a danger to children in care.

(b) Each employee who is regularly or frequently present while children are in care must:

(1) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(2) Have a current record of a tuberculosis examination showing the employee is free of contagious TB, if required by the regional Department of State Health Services or local health authority. If the result is positive, the operation must follow through with all recommendations for further testing. All public health precautions and treatment must be documented and carried out in accordance with public health authority recommendations;

(3) Be physically, mentally, and emotionally capable of performing assigned tasks and have the skills necessary to perform assigned tasks; and

(4) Complete a notarized Licensing Affidavit for Applicants for Employment form, as specified in Human Resources Code, §42.059.

§748.507. What general responsibilities do all employees have?

Regardless of whether the employee is counted in the child/caregiver ratio, each employee must:

(1) Demonstrate competency, prudent judgment, and self-control in the presence of children and when performing assigned responsibilities;

(2) Report suspected abuse, neglect, and exploitation to the Child Abuse Hotline and to the designated staff or administrator; and

(3) Know and comply with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other applicable laws.

§748.509. What are the requirements for tuberculosis testing?

Before having contact with children in care, all caregivers, employees, volunteers, contract service providers, and student interns must be tested for tuberculosis according to the recommendations of a local health authority, or if you do not have a local health authority, the regional Department of State Health Services.

§748.511. How do I document the recommendations of a local health authority or the regional Department of State Health Services for tuberculosis testing?

You must have on file a letter from your local health authority or the regional Department of State Health Services stating its recommendations for tuberculosis testing for the area(s) where your operation is located.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601199

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. CHILD-CARE ADMINISTRATOR

40 TAC §§748.531, 748.533, 748.535, 748.537, 748.539

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.531. What qualifications must a child-care administrator meet?

A child-care administrator must:

(1) Meet the qualifications established by the operation's governing body;

(2) Be a Licensed Child-Care Administrator according to Chapter 43 of the Human Resources Code and Subchapter N of Chapter 745 of this title (relating to Administrator's Licensing); and

(3) Be a full-time employee of the operation.

§748.533. Can a child-care administrator be an administrator for more than one general residential operation, residential treatment center, or child-placing agency?

(a) Except as provided in subsection (b) of this section, a child-care administrator can be an administrator for two operations, including a child-placing agency, if:

(1) The operation(s) and/or the child-placing agency are in good standing with Licensing;

(2) The size and scope of the operation(s) and/or child-placing agency are manageable by one person, which is clarified in the written professional staffing plan;

(3) The child-placing agency, if applicable, is not managing more than 20 foster homes; and

(4) The operations, if applicable, are contiguous.

(b) An operation that provides emergency care services must designate an employee in the staffing plan that is solely responsible for administering those services. This employee must have the experience and background to be able to perform the child-care administrator responsibilities. See §748.535 of this title (relating to What responsibilities must the child-care administrator designated to be responsible for the on-site administration of the operation have?).

(c) An operation that provides assessment services may designate their child-care administrator or another employee as the person responsible for administering those services. The person designated must:

(1) Be a Licensed Child-Care Administrator;

(2) Have a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include:

(A) A minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) At least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or

(3) Have a master's degree in a human services field and at least three years of supervised child-placing experience.

§748.535. What responsibilities must the child-care administrator designated to be responsible for the on-site administration of the operation have?

The child-care administrator must:

(1) Have daily supervision and on-site administrative responsibility for the overall operation.

(2) Be responsible for or assign responsibility for:

(A) Overseeing staffing patterns to ensure the supervision and the provision of child-care services that meet the needs of children in care;

(B) Ensuring the provision of planned but flexible program activities designed to meet the developmental needs of children;

(C) Having a system in place to ensure an employee is available to handle emergencies;

(D) Assigning tasks to caregivers that do not conflict or interfere with caregiver responsibilities;

(E) Administering and managing the operation according to the policies adopted by the governing body;

(F) Ensuring that the operation complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(G) Ensuring a child in care does not act as a caregiver;
and

(H) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the operation.

§748.537. What must the system for ensuring that an employee is available to handle emergencies include?

(a) A person designated to handle emergencies must be on call and accessible to your caregivers.

(b) You must inform all caregivers and us of the system and how to contact the person on call in case of an emergency.

§748.539. Who must have overall administrative responsibility when the child-care administrator is absent on a frequent and/or extended basis?

(a) The child-care administrator must designate an employee to be responsible for the overall administration of the operation while the administrator is absent on a frequent and/or extended basis.

(b) The designee must be a Licensed Child-Care Administrator as required in Chapter 43 of the Human Resources Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601200

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PROFESSIONAL LEVEL SERVICE PROVIDERS

**40 TAC §§748.561, 748.563, 748.565, 748.567, 748.569,
748.571, 748.573, 748.575**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.561. What professional level service activities must a professional level service provider perform at my operation?

A professional level service provider must perform the following functions:

(1) Completing an admission assessment or any other evaluation of a child for placement;

(2) Developing, reviewing, and updating of service plans for a child in care;

(3) Completing a discharge or transfer summary for a child;

(4) Approving any restrictions that will be imposed on a child for more than seven days that have not been reviewed and approved by the treatment director or service planning team, and any monthly re-evaluations of restrictions that continue for more than 30 days;

(5) Approving any restrictions to communication and visitation with the child's family that are imposed on a child, but have not been reviewed and approved by the treatment director or service planning team, including monthly re-evaluations of restrictions that continue for more than 30 days; and

(6) Approving any restrictions to a particular room or building for more than 24 hours that are imposed on a child, but have not been reviewed and approved by the treatment director or service planning team.

§748.563. What professional qualifications must a professional level service provider have in order to perform professional level service activities?

(a) If you provide treatment services to 25 or more children with emotional disorders, or if more than 30% of the children in your care receive treatment services for emotional disorders, then a professional level service provider must have the following qualifications:
Figure: 40 TAC §748.563(a)

(b) To perform services for any other children, a professional level service provider must have the following qualifications:
Figure: 40 TAC §748.563(b)

(c) A person who is a professional level service provider at your operation on or before the effective date of these rules may have the following qualifications in lieu of those set forth in subsection (b) of this section.
Figure: 40 TAC §748.563(c)

§748.565. How must a professional level service provider document approval of professional level service functions?

A professional level service provider must sign and date the following documents to indicate review and approval or disapproval:

(1) Admission assessments or any other evaluation of a child for placement;

(2) Initial service plans, updates, and reviews;

(3) Discharge or transfer summaries;

(4) Any restrictions that will be imposed on a child for more than seven days that have not been reviewed and approved by the treatment director or service planning team;

(5) Any restrictions to communication and visitation with the child's family that are imposed on a child, but have not been reviewed and approved by the treatment director or service planning team; and

(6) Any restrictions to a particular room or building for more than 24 hours that are imposed on a child, but have not been reviewed and approved by the treatment director or service planning team.

§748.567. What are the requirements for the caseloads of a professional level service provider?

There is not a maximum caseload for a professional level service provider; however, you must ensure manageable caseloads that allow professional level service providers to meet the needs of children on their caseload.

§748.569. Must I have health care professionals on staff or on contract if I provide services to children with primary medical needs?

If you provide services to support children with primary medical needs:

(1) You must have a licensed registered nurse on staff or on contract to respond to emergencies, questions, or other medical issues. A registered nurse must work during the day at the operation. A registered nurse in this position may be relieved on days off by a licensed registered nurse or a licensed vocational nurse.

(2) You must arrange for:

(A) 24-hour availability of nursing, medical, and psychiatric services;

(B) Licensed nursing services, including 24-hour nursing direction or supervision;

(C) Assistance with mobility;

(D) Routine adjustments or replacement of medical equipment; and

(E) As needed, caregiver supervision of children during the provision of medical and dental services.

(3) You must ensure that a physician on staff or on contract recommends and approves services at each initial diagnosis and at each review.

§748.571. What are the responsibilities of a registered nurse at an operation that provides services to a child with primary medical needs? The responsibilities of a registered nurse include:

(1) Performing a medical assessment of the child to include the child's medical needs and selection of placement;

(2) Leading the service planning process for the child's care and serving as a resource for caregivers;

(3) Directing the medical training of caregivers, such as gastric tube care;

(4) Reviewing medical records;

(5) Contacting other professionals, as needed, for the child's care;

(6) On-site visits for medical assessments and child record reviews, including compliance with written physician orders;

(7) Monitoring the implementation of the child's service plan; and

(8) Documenting outcomes for interventions used in the child's care.

§748.573. What are the requirements for other nursing personnel for an operation who provides services to a child with primary medical needs?

Your nursing personnel must:

(1) Be awake and available at the operation on a 24-hour basis;

(2) Be under the direction of a registered nurse who is licensed to practice in Texas; and

(3) Include a licensed vocational nurse or registered nurse.

§748.575. In what circumstances may a physician or registered nurse delegate nursing tasks to unlicensed nursing personnel?

The physician or registered nurse may delegate nursing tasks to an unlicensed person only if:

(1) The physician or registered nurse delegating the task is directly responsible for the nursing care given to the child;

(2) The operation employing or contracting with the caregiver or other unlicensed nursing personnel develops and follows a protocol, with input from a registered nurse, for the instruction and training of unlicensed personnel performing nursing tasks. The protocol must address:

(A) An established mechanism for identifying those individuals to whom nursing tasks may be designated;

(B) The manner in which the instruction addresses the complexity of the delegated task;

(C) The manner in which the unlicensed person demonstrates the competency of the delegated task; and

(D) The mechanism for re-evaluation of the competency;

(3) The training protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the physician's or registered nurse's professional judgment; and

(4) A licensed physician or registered nurse must instruct an employee, caregiver, or other unlicensed personnel in performing nursing tasks.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601201

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 4. TREATMENT DIRECTOR

40 TAC §§748.601, 748.603, 748.605, 748.607

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.601. Must I have a treatment director?

You must have a treatment director if you provide treatment services to 25 or more children, or to more than 30% of the children in your care. Your treatment director must be a full-time employee of your operation.

§748.603. What are the responsibilities of a treatment director?

(a) The treatment director:

(1) Is responsible for the overall treatment program, including clinical responsibility for the management of your operation's therapeutic interventions; and

(2) Provides direction and overall management of your treatment program.

(b) When assigning responsibilities to your treatment director, you must ensure that the treatment director can oversee the treatment of all children receiving treatment services.

§748.605. What qualifications must a treatment director have?

(a) A treatment director that provides or oversees treatment services for children with mental retardation or children with pervasive developmental disorders must be:

(1) Licensed as a psychiatrist, psychologist, professional counselor, clinical social worker, marriage and family therapist, or registered nurse; or

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field, and have three years of experience working with children with mental retardation or a pervasive developmental disorder.

(b) A treatment director that provides or oversees treatment services for children with primary medical needs must be a physician or a licensed registered nurse.

(c) A treatment director that provides or oversees treatment services for children with emotional disorders must:

(1) Be a psychiatrist or psychologist;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting.

§748.607. If I provide more than one type of treatment service, can I have one treatment director?

Yes, you can have one treatment director if he meets the required qualifications for the most prevalent treatment services your operation offers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601202

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. CAREGIVERS

40 TAC §§748.681, 748.683, 748.685

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.681. What minimum qualifications must a caregiver meet?

Each employee must meet the following qualifications before you can count him in the child/caregiver ratio:

(1) Be at least:

(A) 18 years old if all the children in the group the caregiver serves are under 13 years old; or

(B) 21 years old if at least one child in the group the caregiver serves is 13 years old or older;

(2) Have one of the following from a program recognized by the Texas Education Agency (TEA) or a public educational entity outside of Texas:

(A) High school diploma; or

(B) High school equivalency, such as a General Educational Development (GED); and

(3) Be able to read, write, and communicate with co-workers, medical personnel, and other persons necessary to care for the child's needs.

§748.683. What are the general requirements for supervising caregivers?

You must provide oversight of caregivers, including volunteers to:

(1) Protect children's health, safety, and well-being; and

(2) Ensure that assigned duties are performed adequately.

§748.685. What responsibilities does a caregiver have when supervising a child or children?

(a) The caregiver is responsible for:

- (1) Child care services for each assigned child;
- (2) Being aware of and accountable for each child's on-going activity;
- (3) Directing each child's activities or actions;
- (4) Providing the level of supervision necessary to ensure each child's safety and well being, including auditory and visual awareness of each child's on-going activity as appropriate; and
- (5) Being able to intervene when necessary to ensure each child's safety.

(b) In deciding how closely to supervise a child, the caregiver must take into account:

- (1) The child's age;
- (2) The child's individual differences and abilities;
- (3) The indoor and outdoor layout of the operation;
- (4) Surrounding circumstances, hazards, and risks; and
- (5) The child's physical, mental, emotional, and social needs.

(c) Caregivers must:

- (1) Know which children they are responsible for;
- (2) Not perform tasks that conflict or interfere with caregiver responsibilities and clearly impede the caregiver's ability to supervise and interact with the children;
- (3) Be aware of the children's habits, interests, and any special needs;
- (4) Maintain a safe and contained environment;
- (5) Cultivate developmentally appropriate independence in children through planned but flexible program activities;
- (6) Positively reinforce children's efforts and accomplishments;
- (7) Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written information or instructions given by the parent or other professionals; and
- (8) Implement and follow the children's service plans.

(d) Caregivers that supervise a child receiving treatment services for an emotional disorder must maintain daily progress notes for the child. Caregivers must sign and date each progress note at the time the progress note is completed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601203

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 6. CONTRACT STAFF, VOLUNTEERS, AND STUDENT INTERNS

40 TAC §§748.721, 748.723, 748.725, 748.727, 748.729, 748.731

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.721. What are the requirements for a volunteer?

(a) You must maintain a personnel record for each volunteer, which includes a student intern.

(b) The personnel record must include a statement signed and dated by the volunteer indicating he must immediately report any suspected incident of abuse, neglect, or exploitation to the Child Abuse Hotline and the operation's administrator or administrator's designee.

(c) If the volunteer provides short-term services through an agency or an organization, you must determine that the organization or agency's policies meet the intent of these rules before the volunteer can have contact with children.

§748.723. What are the additional requirements for a volunteer to be able to perform employee functions?

(a) A volunteer who performs any function must meet the same requirements as an employee who performs that function if regulated under this chapter.

(b) You must maintain records documenting how these requirements are met.

§748.725. Is a family or organization that invites a child in care for an overnight or weekend a "volunteer"?

(a) When a family or organization takes a child who is in care for an overnight or weekend visit, this is not a volunteer activity.

(b) In order for a family or organization to take a child out of care for more than 48 hours, you must get written approval from the parent.

§748.727. Is a "sponsoring family" program a volunteer program?

A sponsoring family program is not considered a volunteer program; however, in order for a sponsoring family to keep the child who is in your care for more than 48 hours, you must get written approval from the parent. You may obtain approval at the time of the child's admission.

§748.729. What must I do when a child in care visits a volunteer or sponsoring family for a day or overnight?

(a) If a child has a day or overnight visit with a volunteer or sponsoring family, you must ensure that:

(1) The child is properly supervised, properly fed and hydrated, and provided with safe housing accommodations, if applicable.

(2) The child's health, safety, and well-being are protected.

(3) Prior to the visit, the person responsible for the child during the visit has information for emergency medical care, such as permission for emergency medical care, telephone numbers for the child's licensed physician(s), and medication and treatment information.

(4) Unless the volunteer is court-appointed, the volunteer must not remove the child from the operation for more than 48 hours without prior written approval of the child's parent.

(b) When a child who is not in your care invites a child who is in your care for an overnight or weekend visit, this is not a volunteer activity. You must get prior written approval from the parent to continue a visit for more than 48 hours.

§748.731. Can I use "volunteers" referred for community service through the courts as an alternative to incarceration or as a condition of probation?

No, you may not use these persons in any operation activities. This prohibition applies even if the activities do not involve contact with children in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601204

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

40 TAC §748.801

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.801. What do certain words mean in this subchapter?

These words have the following meanings in this subchapter:

(1) CEU--Continuing education unit.

(2) CPR--Cardiopulmonary resuscitation.

(3) Hours--Clock hours.

(4) Instructor led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor and must include an opportunity for the student to timely interact with the instructor to obtain clarifications and information beyond the scope of the training materials, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

(5) Self instructional training--Training that is designed to be used by one individual working alone at his own pace to complete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.

(6) Staff member working with children--Child care administrators, professional level service providers, treatment directors, case managers, and caregivers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601205

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ORIENTATION

40 TAC §748.831, §748.833

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.831. What is the orientation requirement for employees?

(a) Prior to beginning job duties or having contact with children in care, each employee must have orientation that includes:

(1) An overview of the relevant and applicable rules of this chapter;

(2) Your philosophy, organizational structure, policies, and a description of the services and programs you offer; and

(3) The needs and characteristics of children that you serve.

(b) You must document the completion of the orientation in the appropriate personnel record.

§748.833. Must I provide orientation to an employee who has previously worked as an employee?

(a) You do not have to provide orientation to an employee who has worked as an employee at your operation during the past 12 months. However, if you assign this employee to be the only caregiver for a group of children, then before you may assign the employee you must:

(1) Discuss with the employee any changes in your services or programs that have occurred since the previous employment; and

(2) Ensure the employee has received training during the past 12 months from your operation on preventing, identifying, treating, and reporting child abuse, neglect, and exploitation.

(b) You must document this discussion and previous training in the caregiver's personnel record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601206

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §§748.861, 748.863, 748.865, 748.867, 748.869

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.861. What are the pre-service experience requirements for a caregiver?

(a) If less than 25 children and less than 30% of your total population of children in care are receiving treatment services, then there are no pre-service experience requirements.

(b) If 25 or more children or 30% or more of your total population of children in care are receiving treatment services, then a caregiver must have 40 hours of supervised child-care experience in an operation that provides the same treatment services. If the 40-hour experience requirement is not met, before you may assign the person as the only caregiver responsible for a group of children, the caregiver must have at least 40 total hours of supervised child-care experience from your operation and/or another operation that provides the same treatment services. Until the caregiver completes the supervised experience, an experienced caregiver must be physically available to supervise the caregiver at all times. The supervised child-care experience must be documented in the appropriate personnel record.

§748.863. What types and how many hours of pre-service training are required for a staff member working with children?

(a) A caregiver must have the following training before being assigned as the only caregiver responsible for a group of children:

(1) Eight hours of general pre-service training related to the needs of the population served by your operation and the different roles of caregivers; and

(2) 16 additional hours of pre-service training regarding emergency behavior intervention.

(b) Other staff members working with children must have 16 hours of pre-service training regarding emergency behavior intervention before beginning job duties.

(c) You must document the completion of each training requirement in the appropriate personnel record.

§748.865. Can time spent in orientation training count towards pre-service training?

No, the orientation training must be separate from the pre-service training requirement.

§748.867. Must I provide pre-service training to a staff member working with children who has previously worked in an operation?

(a) A caregiver is exempt from the eight hours of general pre-service training if he has been employed as a caregiver in a general residential operation or residential treatment center during the past 12 months.

(b) A staff member working with children does not have to complete the 16 hours of pre-service training regarding emergency behavior intervention if he:

(1) Has been employed in a general residential operation or residential treatment center during the past 12 months;

(2) Has received training during the past 12 months in the types of emergency behavior intervention used at your operation; and

(3) Can demonstrate knowledge and competency of the training material both in writing and in physical techniques.

(c) You must document the exemption factors in the appropriate personnel record.

§748.869. What are the instructor requirements for providing pre-service training?

(a) A qualified instructor must deliver the pre-service training.

(b) The training must be instructor led.

(c) A licensed physician, a registered nurse, or a pharmacist must provide training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.

(d) To provide training in emergency behavior intervention the:

(1) Instructor must be certified in a recognized method of emergency behavior intervention, or be able to document knowledge of:

(A) The emergency behavior intervention;

(B) The course material;

(C) Training delivery methods and techniques; and

(D) Training evaluation or assessment methods and techniques; and

(2) Training must be competency-based and require participants to demonstrate skill and competency at the end of the training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601207

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §§748.881, 748.883, 748.885

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.881. What curriculum components must be included in the general pre-service training?

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, and age-appropriate activities for the children;

(2) Measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(3) Strategies and techniques for monitoring and working with these children;

(4) Procedures to follow in emergencies, including fire, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult;

(5) Preventing the spread of communicable diseases; and

(6) The location and use of fire extinguishers and first-aid equipment.

§748.883. If your operation cares for children younger than two years old, what additional curriculum components must be included in the general pre-service training?

If your operation cares for children younger than two years old, the general pre-service training curriculum must also include the following components:

(1) Recognizing and preventing shaken baby syndrome;

(2) Preventing sudden infant death syndrome; and

(3) Understanding early childhood brain development.

§748.885. For caregivers that administer psychotropic medication, what additional curriculum components must be included in the general pre-service training?

Before a caregiver is permitted to administer psychotropic medication, the caregiver must be trained on administering the medication. The training curriculum must include the following components:

(1) Identification of psychotropic medications;

(2) Basic pharmacology (the actions and side effects of, and possible adverse reactions to, various psychotropic medications);

(3) Techniques and methods of administering medications;

(4) Who is legally authorized to provide consent for the psychotropic medication; and

(5) Any related policies and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601208

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.901, §748.903

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

(1) Developing and maintaining an environment that supports positive and constructive behaviors;

(2) The causes of behaviors potentially harmful to children, including aspects of the environment;

(3) Early signs of behaviors that may become dangerous to the child or others;

(4) Strategies and techniques the child can use to avoid harmful behaviors;

(5) Teaching children to use the strategies and techniques of your operation's de-escalation protocols to avoid harmful behavior, and supporting the children's efforts to progress into a state of self-control;

(6) Less restrictive strategies caregivers can use to intervene in potentially harmful behaviors;

(7) Less restrictive strategies caregivers can use to work with oppositional children; and

(8) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

§748.903. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

(a) If you allow the use of emergency behavior intervention, at least 12 of the 16 hours of the pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the components listed in §748.901 of this title (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?).

(b) The training does not have to address the use of any emergency behavior intervention that your policies do not allow.

(c) The other four hours of the pre-service training curriculum regarding emergency behavior intervention must include the following components:

(1) Different roles and responsibilities of caregivers qualified in emergency behavior intervention versus employees or volunteers who are not qualified in emergency behavior intervention;

(2) Escape and evasion techniques to prevent harm to the child and caregiver without requiring the use of an emergency behavior intervention;

(3) Safe implementation of the restraints and/or seclusion techniques and procedures that are appropriate for the age and weight of children served and permitted by the rules in this chapter and your policies and procedures;

(4) The physiological impact of emergency behavior intervention;

(5) The psychological impact of emergency behavior intervention, such as flashbacks from prior abuse;

(6) How to adequately monitor the child during the administration of an emergency behavior intervention to prevent injury or death;

(7) Monitoring physical signs of distress and obtaining medical assistance;

(8) Health risks for children associated with the use of specific techniques and procedures;

(9) Drawings, photographs, or videos of each personal or mechanical restraint permitted by your policy. For mechanical

restraints, this must include the manufacturer's complete specifications for each device permitted, an explanation of modifications to the manufacturer's specifications, and a copy of the approval of the modification from a licensed psychiatrist; and

(10) Strategies for re-integration of children into the environment after the use of emergency behavior intervention, including the debriefing of caregivers and the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601209

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. ANNUAL TRAINING

40 TAC §§748.931, 748.933, 748.935, 748.937, 748.939, 748.941, 748.943, 748.945, 748.947, 748.949

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.931. What are the annual training requirements for a caregiver?

(a) If less than 25 children and less than 30% of your total population of children in care are receiving treatment services, then the caregiver must have 34 hours of annual training.

(b) If 25 or more children or 30% or more of your total population of children in care are receiving treatment services, then the caregiver must have 54 hours of annual training.

(c) Of the relevant 34 or 54 hours of the annual training requirements, every three months a caregiver must complete at least two clock hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 90 days from the date that he last received such training.

§748.933. What are the annual training requirements for staff working with children who are not caregivers?

(a) Staff working with children who are not caregivers and who hold a relevant professional license must receive the annual training necessary to maintain that license. As long as the person receives at least 15 hours of annual training, the person is not required to have any additional hours of annual training.

(b) Staff working with children who are not caregivers and who do not hold a relevant professional license must earn at least 30

hours of annual training. At least 15 of these hours must pertain to the role and responsibility of the person's position.

§748.935. When must a caregiver complete the annual training?

(a) Each caregiver must complete the annual training:

- (1) Within 12 months from the date of his employment; and
- (2) During each subsequent 12-month period.

(b) For a staff member, you have the option of prorating the person's annual training requirements from the date of employment to the end of the calendar year and then beginning a new 12-month period on January 1st.

(c) If a caregiver earns more than the minimum number of training hours required during a particular year, the caregiver can carry over to the next year a maximum of 10 training hours.

§748.937. What types of hours or instruction can be used to complete the annual training requirements?

(a) Annual training may include hours or CEUs earned through:

- (1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;
- (2) Conferences or seminars;
- (3) Self-instructional training, excluding training on emergency behavior intervention, first-aid, and CPR;
- (4) Planned learning opportunities provided by child-care associations or Licensing; or
- (5) Planned learning opportunities provided by a professional contract service provider, child-care administrator, professional level service provider, treatment director, or caregiver who meets minimum qualifications in the rules of this chapter.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another general residential operation or residential treatment center, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

- (2) Annual emergency behavior intervention training;
- (3) First-aid and CPR training;
- (4) CEUs while maintaining a professional license;
- (5) The hours attending college or a professional credentialing or registry program, if the:

(A) Training concerns a topic that is appropriate to the needs of the children that the operation serves, or is directly related to job duties; and

(B) Documentation requirements of §748.949 of this title (relating to What documentation must I maintain for annual training?) are met;

(6) The hours of pre-service training that the person earns in addition to the required pre-service hours. For example, if you complete 24 hours of pre-service emergency behavior intervention training, you may count eight of these hours toward annual training requirements;

(7) Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No addi-

tional credit hours for training curriculum development are permitted for repeated training sessions; and

(8) One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than one-third of the required annual training hours may come from self-instructional training.

§748.939. Does Licensing approve training resources or trainers for annual training hours?

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure the employees receive reliable training relevant to the population of children served, which includes:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.

§748.941. What are the instructor requirements for providing annual training?

The annual training instructors must meet the same requirements in §748.869 of this title (relating to What are the instructor requirements for providing pre-service training?).

§748.943. What areas or topics are appropriate for annual training? Annual training must be in areas appropriate to the needs of children for whom the operation or employee will be providing care, which include:

(1) Developmental stages of children;

(2) Constructive guidance and discipline of children;

(3) Fostering children's self-esteem;

(4) Positive interaction with children;

(5) Strategies and techniques for working with the population of children served;

(6) Supervision and safety practices in the care of children; and

(7) Preventing the spread of communicable diseases.

§748.945. For caregivers that administer psychotropic medication, what annual training is required?

If you permit a caregiver to administer psychotropic medication, his annual training must meet the requirements in §748.885 of this title (relating to For caregivers that administer psychotropic medication, what additional curriculum components must be included in the general pre-service training?).

§748.947. What must annual training regarding emergency behavior intervention include?

(a) The annual training regarding emergency behavior intervention must reinforce basic principles covered in pre-service training, see §748.901 of this title (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?) and §748.903 of this title (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?), and develop and refine the employee's skills.

(b) You may determine the content of the training based on your evaluation of your emergency behavior interventions.

(c) The training may repeat pre-service training components, including training in the proper use and implementation of emergency behavior intervention.

§748.949. What documentation must I maintain for annual training?

(a) You must keep documentation verifying completion of annual training in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) The documentation must include the following information:

- (1) The participant's name;
- (2) Date of the training;
- (3) Title or subject of the training;
- (4) The trainer's name and qualifications, or the source of the training for self-instructional training; and
- (5) Length of the training in hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601210

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §§748.981, 748.983, 748.985, 748.987, 748.989

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.981. Who must have first-aid and CPR certification?

(a) Each caregiver must:

(1) Have a current certification in first-aid, and CPR with training in rescue breathing and choking appropriate for children that you serve; and

(2) Be able to immediately respond to emergencies.

(b) At all times, at least one caregiver counted in child/care-giver ratio must:

(1) Have current certification in CPR; and

(2) Be able to immediately respond to emergencies.

(c) Any new caregiver not currently certified in first-aid and/or CPR must be trained and certified within 90 days of employment.

§748.983. When must a caregiver renew first-aid and CPR certification?

(a) Each caregiver must complete any new first-aid training as required to maintain a current certification.

(b) The caregiver in the child-care ratio, who must have a current certification in CPR, must also complete any new CPR training as required to maintain a current certification.

§748.985. Who can provide first-aid and CPR certification?

(a) The following may provide first-aid and CPR certification:

(1) The American Red Cross, American Heart Association, or a training program that has been approved by the local Emergency Medical Services Authority, or is offered through a local hospital; or

(2) A person with a current certification to provide the training.

(b) A caregiver may not obtain first-aid or CPR certification through self-instructional training.

§748.987. What must the first-aid and CPR training include?

(a) First-aid training and re-certification must consist of a curriculum that includes both written and hands-on skill-based instruction, practice (for CPR, the practice is through the use of a CPR mannequin), and testing.

(b) CPR training and recertification must include CPR for children and adults. For operations that care for infants and/or admit children with infants, the training must also include CPR for infants.

§748.989. What documentation must I maintain for first-aid and CPR certification?

(a) You must document the completion of each training requirement in the appropriate personnel records. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. A photocopy of the original first-aid and/or CPR certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.

(b) The documentation must include the following information:

(1) The participant's name;

(2) Date of the training;

(3) Title or subject of the training;

(4) The trainer's name and qualifications, or the source of the training for self-instructional training;

(5) The expiration date of the certification as determined by the organization providing the certification; and

(6) Length of the training in hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601211

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER G. CHILD/CAREGIVER RATIOS

40 TAC §§748.1001, 748.1003, 748.1005, 748.1007, 748.1009, 748.1011, 748.1013, 748.1015, 748.1017, 748.1019, 748.1021, 748.1023

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1001. What is the child/caregiver ratio?

The child/caregiver ratio is the maximum number of children for whom one caregiver can be responsible.

§748.1003. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?

The number of children that a single caregiver can care for during waking hours depends on how many children at your operation are receiving treatment services and the ages of the children in the group, as noted in the following chart:

Figure: 40 TAC §748.1003

§748.1005. Can child/caregiver ratios be averaged on an operation-wide basis?

No. Child/caregiver ratios apply only to the group of children that is actually being cared for by the caregiver. There must be enough caregivers to meet the child/caregiver ratio for any group of children who are located in the same physical setting. Ratios cannot be averaged with other caregivers in your operation that are caring for other children or working in an administrative capacity.

§748.1007. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's sleeping hours?

The number of children that a single caregiver can care for during sleeping hours depends on whether the caregiver stays awake or sleeps during sleeping hours, how many children at your operation are receiving treatment services, and the ages of the children in the group, as noted in the following chart:

Figure: 40 TAC §748.1007

§748.1009. How many caregivers must I employ?

(a) You must employ an adequate number of qualified caregivers to meet the needs of children, taking into account each child's age, medical, physical, and mental condition and other factors that affect the amount of supervision the child requires, including enough caregivers to meet:

(1) Child/caregiver ratios; and

(2) All of their responsibilities required in §748.685 of this title (relating to What responsibilities does a caregiver have when supervising a child or children?).

(b) If you provide treatment services, your professional staffing plan must identify your:

(1) Ability to have enough caregivers, including caregivers who are awake throughout the night to supervise children 24 hours a day, including frequent one-to-one monitoring whenever necessary to meet the needs of a particular child; and

(2) Staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies.

§748.1011. What employees can be counted as a caregiver in the child/caregiver ratio?

The child/caregiver ratio only includes qualified caregivers who are working directly with a child or group of children.

§748.1013. How does a caregiver care for a child needing constant supervision during sleeping hours?

(a) A caregiver must always be awake when caring for a child needing constant supervision, such as a medically fragile child or a child that is an immediate danger to himself or others.

(b) To facilitate continuous care for a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to himself or others. The caregiver must provide comfortable sleeping arrangements for the child.

§748.1015. How does the child/caregiver ratio apply if I provide care for both children in care and children of caregivers, or for both children and adult residents?

(a) The child/caregiver ratio applies to the children of caregivers who are present with children in care.

(b) For both children and adult residents, you must maintain the ratio as outlined in §748.1935 of this title (relating to How does the child/caregiver ratio apply if I provide care to both children and adults?).

§748.1017. How does the child/caregiver ratio apply to activities that occur away from my operation?

(a) The child/caregiver ratio applies to activities sponsored or conducted by the operation, including field trips, higher risk recreational activities, and appointments that occur away from the operation.

(b) You must have additional caregivers to meet the special needs of children when there are activities away from your operation, for example a non-ambulatory child.

§748.1019. What are the supervision requirements for a transitional living program?

A caregiver counted in the child/caregiver ratio who is responsible for supervising children of the same gender in a transitional living program must:

- (1) Reside in or within close physical proximity of the children's living quarters;
- (2) Be onsite at the operation during times when children are awake, but the caregiver is not physically present with the children;
- (3) Be physically available to the children at all times;
- (4) Be capable of responding quickly in an emergency; and
- (5) Be capable of monitoring the comings and goings of the children in the program.

§748.1021. When does a child who is in a transitional living program not need supervision?

(a) You must evaluate each child in a transitional living program to determine whether the child needs supervision. The evaluation must:

- (1) Include a written plan defining the periods of time the child may be left unsupervised;
- (2) Include a written plan for addressing behavioral problems that a child may have while in the transitional living program; and
- (3) Identify how the child may contact the caregivers when caregivers are not physically present with the child, such as being available to the child by telephone or other means of contact.

(b) The child's service planning team must approve the evaluation.

(c) You must document the evaluation of the child and the approval in the child's record. You must review and update the evaluation during the child's service planning meetings.

§748.1023. Is my operation permitted to have a transitional living program with living quarters, a cottage, or a house with both male and female residents?

You must not have living quarters, a cottage, or a house with both male and female residents, unless caregivers are always present when children are at the living quarters, cottage, or house of the transitional living program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601212

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER H. CHILD RIGHTS

40 TAC §§748.1101, 748.1103, 748.1105, 748.1107, 748.1109, 748.1111, 748.1113, 748.1115, 748.1117, 748.1119

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1101. What rights does a child in care have?

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) You must adhere to the child's rights, including:

(1) The right to appropriate care and treatment in the least restrictive setting available that can meet the child's needs;

(2) The right to be free from discrimination on the basis of gender, race, religion, national origin, or sexual orientation;

(3) The right to have physical, emotional, developmental, educational, social, and religious needs met;

(4) The right to be free of abuse, neglect, and exploitation as defined in Texas Family Code, §261.401;

(5) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment, which includes:

(A) Shaking the child;

(B) Subjecting the child to corporal punishment;

(C) Threatening the child with corporal punishment;

(D) Any unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(E) Denying the child food, sleep, toileting facilities, mail, or family visits as punishment;

(F) Subjecting the child to remarks that belittle or ridicule the child or the child's family; and

(G) Threatening the child with the loss of placement or shelter as punishment;

(6) The right to discipline that is appropriate to the child's age and developmental level;

(7) The right to have restrictions or disciplinary consequences explained when the measures are imposed;

(8) The right to a humane environment, including any treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs;

(9) The right to receive educational services appropriate to the child's age and developmental level;

(10) The right to training in personal care, hygiene, and grooming;

(11) The right to reasonable opportunities to participate in community functions, including recreational and social activities such

as Little League teams, Girl Scouts and Boy Scouts, and extracurricular school activities outside of the operation, if appropriate;

(12) The right to have adequate personal clothing, which must be suitable to the child's age and size and comparable to the clothing of other children in the community;

(13) The right to have personal possessions at the child's placement and to acquire additional possessions within reasonable limits;

(14) The right to be provided with adequate protective clothing against natural elements such as rain, snow, wind, cold, sun, and insects;

(15) The right to maintain regular contact with family members unless the child's best interest, appropriate professionals, or court necessitates restrictions;

(16) The right to send and receive uncensored mail, to have telephone conversations, and to receive visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(17) The right to hire independent mental health-care professionals, medical professionals, and attorneys at the child's own expense;

(18) The right to be compensated for any work done for the operation as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning his room or other assigned chores;

(19) The right to have personal earnings, allowances, possessions, and gifts as the child's personal property;

(20) The right to be able to communicate in a language or any other means that is understandable to the child at admission or within a reasonable time after an emergency admission of a child, if applicable, such as having a plan for an interpreter, having at least one person at the operation at all times who can communicate with the child in the child's own language, or other means to communicate with the child in the child's own language;

(21) The right to confidential care and treatment;

(22) The right to consent to any publicity or fund raising activity for the operation, including the use of his photograph;

(23) The right not to receive unnecessary or excessive medication;

(24) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning;

(25) The right to participate in the development and review of the child's service plan within the limits of the child's comprehension and ability to manage the information;

(26) The right to receive emotional, mental health, or chemical dependency treatment separate from adults (other than young adults) who are receiving services;

(27) The right to receive appropriate treatment for physical problems that affect the child's treatment or safety; and

(28) The right to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation.

§748.1103. How must I inform a child and the child's parents of their rights?

(a) Within 24 hours after you accept a child into your operation, you must review the child's rights with the child and a child's parent, unless the parent's consent is not required. You must also provide the child and a child's parent with a written copy of the child's rights.

(b) Child rights must be written in:

(1) Simple, non-technical terms; and

(2) English, unless the person does not understand English. The child's rights must be written in the person's primary language, if possible.

(c) If the person you are informing has a visual or auditory impairment, you must explain the child's rights in a manner that is understandable to the person.

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. You must put the signed copy in the child's record.

(e) You must provide the child with an additional copy or explanation of the child's rights within 72 hours upon his request.

§748.1105. What provisions must I make for a child's personal care? You must provide the child with:

(1) Opportunities to select his clothing; and

(2) Appropriate equipment and supplies for personal care, hygiene, and grooming.

§748.1107. What right does a child have regarding contact with his parent(s)?

(a) You must allow contact between a child and his parent(s) whose parental rights have not been terminated according to:

(1) Your policies; and

(2) The provisions of a court order or any visitation agreements.

(b) You must document in the child's service plan:

(1) Plans for contact between the child and a parent; and

(2) Any decision to limit contact with a parent.

(c) Before the service planning team, treatment director, or professional level service provider can temporarily restrict ongoing contacts or communication between the child and a parent, you must:

(1) Explain the reasons for the restrictions to the child and the child's parent; and

(2) Document the reasons in the child's record.

(d) Restrictions that continue for more than 30 days must be re-evaluated monthly by a professional level service provider, who also must:

(1) Explain the reasons for the continued restrictions to the child and the child's parents; and

(2) Document the reasons in the child's record.

(e) If you limit communications or visits with a parent for practical reasons, such as geographical distance or expense, you must discuss the limits with the child and the child's parents. You must document the limits in the child's record.

§748.1109. What right does a child have regarding contact with siblings?

(a) A child must have a reasonable opportunity for sibling visits and contacts in an effort to preserve sibling relationships.

(b) You must address plans for sibling visits and contacts in the child's service plan.

(c) When contact is restricted or not allowed, you must include justification in the service plan and service plan reviews and updates.

(d) If barriers to visits exist, such as unavoidable geographic distance and expense issues, the operation must make provisions for sibling contact through letters, telephone calls, or some other means.

§748.1111. What right to privacy does a child have in his communications with others?

(a) Except as determined by the child's service planning team, treatment director, professional level service provider, or managing conservator, you may not:

(1) Open or read the child's incoming or outgoing mail, including electronic mail; or

(2) Monitor the child's telephone calls.

(b) You must document in the child's record:

(1) Any reason for restricting the child's mail or telephone calls; and

(2) A list of the mail or telephone calls that you restrict.

(c) You must inform the child and his parent about restrictions you place on the child.

(d) Restrictions that continue for more than 30 days must be re-evaluated monthly by a professional level service provider, who also must:

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

§748.1113. Under what circumstances may I conduct a search?

(a) A child's possessions must be free of unreasonable searches and removal of personal items.

(b) You may search a child, his possessions, or his room only when you have reasonable suspicion:

(1) Of the presence of any contraband;

(2) That the child made suicidal threats or threatened to hurt himself or others; or

(3) That the child was involved in theft.

(c) Only a caregiver of the same gender as the child may conduct a search that involves the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.

(d) If a search involves the removal of clothing (other than outer clothing), a second caregiver must witness the search.

(e) The caregiver must ensure that other children do not witness a search that involves the removal of clothing, other than outer clothing.

§748.1115. May a caregiver conduct a body cavity search of a child in care?

With the exception of a child's mouth, a caregiver may not conduct a body cavity search of a child in care.

§748.1117. What must I document regarding a search?

You must document the following in the child's record when you conduct a search:

(1) The date of the search;

(2) The name of the child and any other children involved;

(3) Reason for the search;

(4) A description of what you searched;

(5) The clothing removed, if applicable;

(6) The name of the caregivers conducting the search;

(7) The name of the witness, if applicable;

(8) The results of the search; and

(9) The resolution of the issue with the child or children involved.

§748.1119. What techniques am I prohibited from using on a child? You may not use any of the following techniques on a child:

(1) Chemical restraints. For more information on emergency behavior intervention, see Subchapter N of this chapter (relating to Emergency Behavior Intervention);

(2) Aversive conditioning, which includes, but is not limited to, any technique designed to or likely to cause a child physical pain, the application of startling stimuli, and the release of noxious stimuli or toxic sprays, mists, or substances in proximity to the child's face;

(3) Pressure points;

(4) Rebirthing therapy;

(5) Hug and/or holding therapy; and

(6) Tazor or stun guns.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601213

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER I. SERVICE MANAGEMENT

DIVISION 1. ADMISSION

40 TAC §§748.1201, 748.1203, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1221, 748.1223, 748.1225, 748.1227

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1201. May children receiving different types of service live in the same living quarters?

(a) Except as provided by subsection (b) of this section, children receiving different types of service may reside in the same living quarters as long as:

(1) A professional level service provider completes an assessment of the living quarters for each child that you place in the living quarters; and

(2) In each assessment, the professional level service provider ensures that:

(A) There is no conflict of care with the best interests of any of the children placed in the living quarters;

(B) Placing the child with different service or treatment needs in the living quarters will not adversely impact the other children in the living quarters;

(C) The number of children in the living quarters is appropriate at all times based on the needs of all children in the living quarters;

(D) Caregivers can appropriately supervise all children in the living quarters at all times; and

(E) You can meet the needs of all children in the living quarters.

(b) Children admitted for emergency care services must have separate living quarters, such as a separate wing of an operation, or a separate cottage. Children admitted for emergency care services must not be combined with children in non-emergency care for routine and daily activities.

§748.1203. What children may I admit?

(a) You may only admit children who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must apply for an amended permit with us. You can only accept:

(1) The maximum number of children specified on your permit;

(2) Children whose age and gender are specified on your permit; and

(3) Children needing the types of services that are specified on your permit.

(b) You may provide emergency care services only during an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring. An emergency does not include the need for placement solely because a child has exhausted his stay at a previous operation. You must document information regarding the immediate danger in the child's record upon admission.

(c) You may admit a child with an emotional disorder for treatment services or emergency care services whose behavior and/or history indicates an immediate danger to himself or others, as long as:

(1) Your physical setting at your operation permits your caregivers to observe the child directly and continuously; and

(2) Medical care and psychiatric consultation from a health-care professional is available 24 hours a day, which must be documented. The health-care professional does not have to be an employee of the operation.

(d) Each placement must meet the child's physical, medical, recreational, educational, and emotional needs as identified in the child's admission assessment.

§748.1205. What must I document in the child's record at admission?

(a) You must document the following in the child's record at admission:

(1) The child's name, gender, race, religion, date of birth, and birthplace;

(2) Court orders establishing who is the managing conservator for the child, if applicable;

(3) The name, address, and telephone number of the managing conservator, the primary caregivers for the child, and any other individual who has the legal authority to consent to the child's medical care;

(4) The date and time of admission;

(5) Medication the child is taking;

(6) The child's immunization record;

(7) Allergies, such as food, medication, sting, and skin allergies;

(8) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving; and

(9) A copy of the placement agreement, if applicable.

(b) If you admit a child for emergency care services, you must document the information in subsection (a) of this section within 72 hours after you admit the child. If any information is not available within that time frame, you must document in the child's record diligent efforts made to obtain the information.

(c) For emergency admissions, as opposed to a child receiving emergency care services, you must meet the requirements in Division 2 of this subchapter (relating to Emergency Admission).

§748.1207. What is a placement agreement?

A placement agreement is your agreement with a child's parent that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person legally authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

§748.1209. What orientation must I provide a child at admission?

(a) You must provide orientation to each newly admitted child who is not an infant or a toddler. You must gear orientation to the intellectual level of the child.

(b) For a child functioning at a school age level, orientation must include information about your policies on the following:

(1) Visitation, including family visitation and overnight visitation;

(2) Mail;

(3) Telephone calls;

(4) Gifts;

(5) Personal possessions, including any limits placed on the possessions the child may or may not have;

(6) Emergency behavior intervention, including your policies and practices on the use of personal restraint;

(7) Discipline;

(8) The religious program and practices;

(9) The educational program;

(10) Trips away from the operation;

(11) Program expectations and rules; and

(12) Grievance procedures.

(c) For a child functioning above toddler age and below school age, orientation must include as many of the items in subsection (b) of this section as possible.

(d) You must document in the child's record when the orientation occurred, any items that the orientation did not include, and the reason that the orientation did not include that item.

§748.1211. What information must I share with the parent at the time of placement?

(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.

(b) At admission, you must review and provide written materials to the parent placing the child that explain:

(1) Information about the policies that you would present a child during orientation;

(2) Your policies regarding the:

(A) Use of volunteers or sponsoring families; and

(B) Type and frequency of notifications made to parents; and

(3) The parent's right to:

(A) Refuse to consent to the child's participation in research programs;

(B) Give written consent before you involve the child in any publicity and/or fund raising activity for the operation; and

(C) Withdraw consent for services at any time.

§748.1213. What information must I provide caregivers when I admit a child?

(a) You must provide caregivers responsible for the child's care with information about the child's immediate needs by the date you admit the child for care.

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions.

§748.1215. When must I complete the admission assessment?

(a) You must complete the admission assessment when you admit the child for care. For an emergency admission assessment, see §748.1269 of this title (relating to For an emergency admission, when must I complete all of the requirements of an admission assessment?).

(b) If the treatment or service needs of any children in the living quarters changes, the professional level service provider must complete a new assessment of each child in the living quarters.

(c) The professional level service provider must sign and date each assessment, which must be in the child's record.

§748.1217. What information must an admission assessment include?

(a) An admission assessment must provide an initial evaluation of the appropriate placement for a child, ensure that you obtain the information necessary for you to facilitate service planning, and must include the following information:

(1) The child's legal status;

(2) A description of the circumstances that led to the child's referral for substitute care;

(3) The child's social history, including information about past and existing relationships and the quality of the relationships among the child and the child's birth parents, siblings, and extended family members;

(4) A description of the child's home environment and family functioning;

(5) A description of the child's behavior, including appropriate and maladaptive behavior;

(6) The child's skills and special interests;

(7) Any history of physical, sexual, or emotional abuse or neglect;

(8) Medical, health, and dental history, including:

(A) Current health status;

(B) Birth history;

(C) Neonatal history; and

(D) Available results of any medical and dental examinations;

(9) The child's mental health and substance abuse history, including available results of any psychological or psychiatric examination;

(10) The child's developmental history and current level of functioning;

(11) The child's school history, including current educational level, the names of previous schools attended and the dates the schools were attended, grades earned, special achievements, and any school problems;

(12) The child's history of any other placements outside the child's home, including the admission and discharge dates and reasons for placement;

(13) The child's criminal history, if applicable;

(14) Documentation indicating efforts made to obtain any of the identifying information in paragraphs (1)-(13) of this subsection, if any information is not obtainable;

(15) The services you plan to provide to the child;

(16) Immediate and long-range goals of placement;

(17) The parent's expectations for placement, duration of the placement, and family involvement;

(18) The child's understanding of the placement;

(19) Recommendations for any further assessment services and testing;

(20) A recommended behavior management plan;

(21) A determination of whether you can meet the needs of the child based on an evaluation of the child's special strengths and needs in the following areas:

- (A) Physical, including medical and dental health;
- (B) Family relationships and family functioning, including parenting if applicable;
- (C) Social and recreational;
- (D) Educational; and
- (E) Emotional/psychological; and

(22) A rationale for the appropriateness of the admission.

(b) You must request in writing materials from the child's current or most recent placement, such as the admission assessment, professional assessments, and the discharge summary. You must consider information from these materials when you complete your admission assessment if they are made available to you.

(c) This rule does not apply to children receiving emergency care services. See §748.4231 of this title (relating to What information must an admission assessment include for a child needing emergency care services?).

§748.1219. What are the additional admission requirements when I admit a child for treatment services?

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §748.1219

§748.1221. What must I do if I cannot obtain the required information for an admission assessment?

(a) You must make diligent efforts to obtain all required information.

(b) If you and the child's managing conservator determine attempting to get information at the time of placement would not be in the child's best interests, you may postpone attempting to acquire the information.

(c) In the child's admission assessment, you must document why a:

(1) Particular piece of information is unavailable; or

(2) Delay in obtaining a piece of information is necessary, including efforts made to obtain the information.

§748.1223. What are the medical requirements when I admit a child into care?

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission, unless you have documentation that the child has had a medical examination within the past year.

(b) If you admit a child with primary medical needs, you must provide the child with a medical examination by a health-care professional within seven days before or three days after the date of admission.

(c) If a child admitted shows symptoms of abuse or illness, a health-care professional must examine the child immediately.

(d) The report and findings of any medical examination must be signed and dated by the health-care professional who performed the examination and must be documented in the child's record.

§748.1225. What are the dental requirements when I admit a child into care?

(a) If the child is younger than three years old and a physician recommends a dental examination, then you must ensure that a dentist examines the child.

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year.

(c) The report and findings of the dental examination must be signed and dated by the dentist and must be documented in the child's record.

§748.1227. What must I document when I re-admit a child for care?
For re-admission, you must complete the admission documentation as if the child was never in your care; or for children that were discharged from your operation within the last 12 months, you may update the previous admission documentation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601214

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. EMERGENCY ADMISSION

40 TAC §§748.1261, 748.1263, 748.1265, 748.1267, 748.1269, 748.1271

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1261. For which of my programs may I accept emergency admissions?

Neither a transitional living program nor a therapeutic camp program may accept emergency admissions. All other programs may accept emergency admissions.

§748.1263. What constitutes an emergency admission to my operation?

You may admit a child on an emergency basis if the child:

(1) Is being removed from a situation involving alleged abuse or neglect;

(2) Is an alleged perpetrator of abuse and cannot be served in the child's current placement due to his perpetrating behaviors;

(3) Displays behavior that is an immediate danger to himself or others and cannot function or be served in his current setting;

(4) Is abandoned and the child's identity cannot be immediately determined after exercising reasonable diligence. Efforts made

to obtain information on the child's identity must be documented in the child's record;

(5) Is removed from his home or placement, and there is an immediate need to find a residence for the child; or

(6) Is released to your authorized emergency care program by a law enforcement or juvenile probation officer.

§748.1265. May I take possession of a child through a law enforcement or juvenile probation officer?

If you are permitted by Licensing to provide emergency care services, then you may take possession of a child through a law enforcement or juvenile probation officer.

§748.1267. What actions must I take when I admit a child through a law enforcement or juvenile probation officer?

When you take possession of a child through a law enforcement or juvenile probation officer, you must:

(1) With the assistance of the officer who released the child to you, complete an Admission of a Release of a Child from a Law Enforcement or Juvenile Probation Officer Form;

(2) Fax the completed form to DFPS; and

(3) Immediately notify us that you have taken possession of the child.

§748.1269. For an emergency admission, when must I complete all of the requirements for an admission assessment?

(a) For an emergency admission, you must complete all of the requirements (see Division 1 of this subchapter (relating to Admission)) for an admission assessment within 40 days from the date of the child's admission.

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission, unless the child has received the psychological, psychiatric, psychometric, or physician's evaluation that is required by §748.1219 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?), and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

§748.1271. At the time of an emergency admission, what information must I document in the record of the child I admit?

At the time of the emergency admission:

(1) You must document in the child's record a brief description of the circumstances necessitating the emergency admission; and

(2) For the purpose of providing treatment services, you must also obtain and document the following in the child's record:

(A) A brief description of the child's history;

(B) The child's current behavior; and

(C) Your evaluation of how the placement will meet the child's needs and best interests.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601215

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. EDUCATIONAL SERVICES

40 TAC §§748.1301, 748.1303, 748.1305

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1301. What responsibilities do I have for the education of a child in care?

(a) You must arrange an appropriate education for each child, including:

(1) Ensuring a school-age child has the training and education in the least restrictive setting necessary to meet the child's needs and abilities;

(2) Ensuring the child in care attends an educational facility or program approved or accredited by the Texas Education Agency; and

(3) Advocating that a school-age child receives the educational instruction to which he is entitled under provisions of federal and state law and regulations.

(b) For children receiving treatment services you must designate a liaison between the agency and the child's school.

§748.1303. What responsibilities do I have for a child's individual educational needs?

You must:

(1) Review report cards and other information received from teachers or school authorities with the child and provide necessary information to caregivers;

(2) Counsel and assist the child regarding adequate classroom performance;

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities to the extent of the child's interests and abilities and in accordance with the child's service plan;

(4) Provide a quiet, well-lighted space for the child to study and allow regular times for homework and study;

(5) Know what emergency behavior interventions are permitted and being used with the child;

(6) Request ARD, IEP, ITP meetings if concerned with the child's educational program or if the child does not appear to be making progress; and

(7) Attend ARD, IEP, ITP meetings, and other school staffings and conferences to represent the child's educational best

interests, including the child being evaluated for and provided with services needed to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

§748.1305. If I have an educational program, what information must I provide to a child's parent about that program?

If you have an educational program, you must include the following information in the discussion and in the written material you give to parents when you admit the child:

- (1) The name of any educational program operated on the premises of your operation;
- (2) Whether the program is accredited;
- (3) Whether the Texas Education Agency has approved the program;
- (4) Whether the educational course work is transferable to public schools; and
- (5) The credentials of the teachers, if the teachers are not approved and regulated by the Texas Education Agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601216

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. SERVICE PLANS

40 TAC §§748.1331, 748.1333, 748.1335, 748.1337, 748.1339, 748.1341, 748.1343, 748.1345, 748.1347, 748.1349, 748.1351

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1331. What are the requirements for a preliminary service plan?

(a) You must complete a preliminary service plan that addresses the immediate needs of a child receiving services within 72 hours of the child's admission.

(b) In addition, for a child receiving treatment services the preliminary service plan must include:

(1) A description of the child's immediate treatment and care needs;

(2) A description of the child's immediate educational, medical, and dental needs, including possible side effects of medications or treatment prescribed to the child;

(3) A description of how you will meet the child's needs, including follow-up actions of possible side effects of medication or treatment provided to the child;

(4) The identification of any issues or concerns the child may have that could escalate a child's behavior. Identification of a child's issues or concerns must serve to avoid the use of unnecessary emergency behavior interventions with the child. Child concerns may include issues with food, eye contact, physical touch, personal property, or certain topics; and

(5) A designation of who will be responsible for meeting each of the child's needs.

(c) The plan must be compatible with the information included in the child's admission assessment.

(d) You must document the plan in the child's record.

(e) You must inform each professional level service provider and caregiver working with a child about the child's preliminary service plan.

(f) You must implement and follow the preliminary service plan.

§748.1333. Who must be involved in developing the preliminary service plan for children receiving treatment services?

The treatment director or a professional level service provider must develop, sign, and date the preliminary service plan for children receiving treatment services.

§748.1335. When must I complete an initial service plan?

You must complete the initial service plan within 40 days after you admit the child.

§748.1337. What must a child's initial service plan include?

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a scheduled date for review and development and a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented and include those items that a preliminary plan must include (see §748.1331 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:
Figure: 40 TAC §748.1337(b)

(c) For children receiving treatment services, the plan must address all of the child's waking hours.

§748.1339. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) A current caregiver; and

(2) Any professional level service provider who provides direct services to the child.

(b) If you are providing treatment services to the child, the team must also consist of two of the following professions, which may or may not include additional members:

- (1) A licensed professional counselor;
- (2) A psychologist;
- (3) A psychiatrist or physician;
- (4) A licensed registered nurse;
- (5) A licensed masters level social worker;
- (6) A licensed or registered occupational therapist; or

(7) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(c) The child, as appropriate, and the parents must be invited to the meeting to develop the service plan.

§748.1341. When must I inform the child's parent(s) of an initial service plan meeting?

(a) You must give the child's parent(s) at least two weeks advance notice of the meeting.

(b) The child's record must include the notice, the mailed copy or summary, and any responses from the parents.

§748.1343. Must a professional level service provider or a professional who must participate in a child's service plan be an employee of my operation?

No. You may employ or contract with a professional level service provider or any other professional who participates in a child's service plan.

§748.1345. What roles do professional level service providers have in service planning?

The roles of professional level service providers in service planning include:

Figure: 40 TAC §748.1345

§748.1347. What must I document regarding a professional level service provider's participation in the development of an initial service plan?

(a) You must document the professional level service provider's:

- (1) Name;
- (2) Date of participation; and
- (3) Comments and input.

(b) The professional level service provider must sign and date the document. If the provider disagrees with any portion of the plan, the provider must document the issue(s) of contention before signing it.

(c) The plan is not effective until the documentation requirements set forth in this rule are complete.

§748.1349. With whom do I share the initial service plan?

(a) You must give a copy or summary of the initial service plan to the:

- (1) Child, when appropriate; and
- (2) Child's parents.

(b) If you do not share the service plan or summary with the child, you must document in the child's record your justification for not sharing the plan.

(c) You must inform the child's caregivers of the plan. It also must be explained and made available to caregivers.

§748.1351. When must I implement a service plan?

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than 10 days after the date of the service-planning meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601217

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. SERVICE PLAN REVIEWS AND UPDATES

40 TAC §§748.1381, 748.1383, 748.1385, 748.1387, 748.1389

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1381. How often must I review and update a service plan?

Except for when the child's placement within your operation changes because of a change in the child's needs, you must review and update the service plan as follows:

Figure: 40 TAC §748.1381

§748.1383. How does a child's transfer within my operation affect the timing of the review of a child's service plan?

(a) You must review a child's service plan whenever the child's placement within your operation changes because of a change in the child's needs.

(b) If the child's placement in your operation changes for another reason:

(1) The child's service planning team must approve the decision not to review the plan; and

(2) You must document the decision not to review the plan.

§748.1385. How do I review and update a service plan?

To review and update a service plan, you must:

(1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports;

(2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees;

(3) Document any achieved or changed objectives;

(4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;

(5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional level service providers, and parents, if applicable;

(6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;

(7) Update the estimated length-of-stay and discharge plans, if changed;

(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:

(A) Continue the placement;

(B) Continue the placement as child-care services;

(C) Transfer the child to a less restrictive setting; or

(D) Refer the child to an inpatient hospital;

(9) Document in the child's record the review and update of the plan;

(10) Evaluate the use and effectiveness of emergency behavior intervention techniques if used during the child's progress reporting period. If applicable, this evaluation must focus on:

(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;

(B) Strategies to reduce the need for emergency behavior interventions overall; and

(C) Specific strategies to reduce the need for use of personal and mechanical restraints, emergency medication, and/or seclusion, where applicable; and

(11) Document the names of the persons participating in the review and update.

§748.1387. Are the participation, implementation, and documentation requirements for a service plan review and update the same as for an initial service plan?

Yes, the same requirements found in Division 4 of this subchapter (relating to Service Plans) apply to a service plan review and update.

§748.1389. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for mental retardation?

(a) Each child's intellectual functioning must be re-evaluated at least annually by a psychologist qualified to provide psychological testing until the child is 10 years old and every two years thereafter; or

(b) A psychologist must determine the frequency for a specific child's intellectual functioning to be re-evaluated. This determination, including justification for the time frame, must be documented in the child's record annually by the service planning team.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601218

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. DISCHARGE AND TRANSFER PLANNING

40 TAC §§748.1431, 748.1433, 748.1435, 748.1437, 748.1439, 748.1441, 748.1443, 748.1445

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1431. What does a "transfer" of a child in care mean?

A transfer of a child in care refers to a child in care who is moved from one of your programs to another of your programs operated under the same permit.

§748.1433. Who must plan a child's non-emergency discharge or transfer?

(a) You must involve the following persons in planning the child's non-emergency discharge or transfer:

(1) At least one of the child's regular caregivers;

(2) Any professional level service provider involved in service planning;

(3) The child; and

(4) The child's parent(s), if agreeable.

(b) If you are unable to plan the transfer or discharge with the persons as required in subsection (a) of this section, you must document in the child's record the reason why. For example, an emergency transfer or discharge was necessary or the child met the requirements to consent for emergency care services and decided not to include his parents in planning for the child's transfer or discharge.

(c) If a child in your care is not receiving treatment services, you must inform him of his non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your administrator has clear justification for not giving him such notice. Your administrator, who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(d) If a child in your care is receiving treatment services, you must inform him of his non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has justification for not giving

him such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

§748.1435. How do I discharge or transfer a child who is an immediate danger to himself or others?

An employee of your operation must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

§748.1437. What must I document in the child's record at the time of a planned discharge or transfer?

(a) Your documentation of a planned discharge or transfer is called a "discharge or transfer summary" and must include:

(1) A discharge or transfer summary showing services provided to the child, accomplishments, assessment of remaining needs, and recommendations about the services to meet those needs;

(2) The date and circumstances of the discharge or transfer;

(3) Discharge or transfer medications and/or prescriptions for medications;

(4) Support resources for the child, including telephone numbers and addresses;

(5) Aftercare plans and recommendations, including medical, psychiatric, psychological, dental, educational, and social appointments;

(6) Date and time the child was informed of his discharge or transfer; and

(7) For discharges, the name, address, and relationship of the person to whom you discharge the child, unless the child legally consents to his discharge. If the child legally consents to his discharge and does not want to involve the child's parent(s), you must document this in the child's record.

(b) The documentation requirements can be met by providing the original or copies of the child's record containing the information in subsection (a) of this section to the receiving program before or at the time of the child's transfer. However, the date the information was provided, and the name of the person(s) who provided and received the information must also be documented in the child's record.

§748.1439. When I discharge a child to another operation or child-placing agency, what information must I provide them?

(a) On or before the child's discharge, you must attempt to obtain legal consent to release the discharge summary according to subsections (b) and (c) of this section. If consent is not obtained, your attempt to obtain consent must be documented in the child's record.

(b) If legal consent is granted when you discharge a child to another operation, you must provide the following information in writing to that operation:

(1) The child's background information, including progress notes for the past 60 days, if applicable;

(2) Any unresolved incidents or investigations involving the child, if applicable;

(3) Assessments and/or evaluations that you have performed for the child, including the child's admission assessment, diagnostic assessment, educational assessment, neurological assessment, and psychiatric or psychological evaluation;

(4) The child's service plans while in your care for the past 12 months;

(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed; and

(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care.

(c) Within 30 days from the date of the child's discharge, you must provide the receiving operation with the child's discharge summary if legal consent is granted.

§748.1441. To whom do I provide a copy of the discharge summary when I discharge a child to his home?

You must send a copy of the discharge summary to the child's parent within 30 days after you discharge the child.

§748.1443. What constitutes an emergency transfer or discharge?

An emergency transfer or discharge occurs when:

(1) The parent withdraws a child unexpectedly from care, including withdrawals with less than 10 days notice;

(2) There is a medical emergency requiring inpatient care;

(3) The child is absent from your operation and cannot be located; or

(4) There is an immediate danger to the child or others and the child remains in the operation or program.

§748.1445. What must I document in the child's record at the time of an emergency discharge or transfer?

At the time of an emergency discharge or transfer, you must document the following in the child's record:

(1) The circumstances necessitating the emergency transfer or discharge;

(2) The date of transfer or discharge; and

(3) The name, address, and relationship of the person to whom you transfer or discharge the child, where applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601219

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. RELEASE OF CHILD

40 TAC §748.1481

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.1481. To whom may I release a child?

(a) Except in an emergency, you must only release a child to the child's parent, a person designated by the parent, or law enforcement authorities.

(b) You must instruct all employees and service providers to follow your policies for:

(1) Releasing a child;

(2) Verifying the identity of a person authorized to pick up a child but whom the caregiver does not know;

(3) Recording the identity of the person in a log or other designated location; and

(4) Retaining the identifying information at the operation until the child returns.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601220

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER J. CHILD CARE

DIVISION 1. DENTAL CARE

40 TAC §§748.1501, 748.1503, 748.1505

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1501. What general dental requirements must my operation meet?

(a) A child in your care must receive dental care:

(1) Initially, according to the requirements in §748.1225 of this title (relating to What are the dental requirements when I admit a child into care?);

(2) At as early an age as necessary;

(3) As needed for relief of pain and infections; and

(4) As needed for ongoing maintenance of dental health.

(b) The child's record must include a written record of each dental examination specifying the:

(1) Date of the examination;

(2) Procedures completed;

(3) Follow-up treatment recommended and any appointments scheduled;

(4) The child's refusal to accept medical treatment, if applicable; and

(5) A copy of the results of the dental examination that is signed and dated by the health-care professional who performed the examination.

(c) You must obtain follow-up dental work recommended by the dentist, such as treatment of cavities and cleaning.

§748.1503. Who must determine the need and frequency of ongoing maintenance of dental health for a child?

A licensed dentist must determine the need and frequency of ongoing maintenance of dental health. You must comply with dentist recommendations for examinations and treatment for each child.

§748.1505. Who must perform dental examinations and provide dental treatment?

A health-care professional licensed in the state of Texas to practice dentistry must provide dental care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601222

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. MEDICAL CARE

40 TAC §§748.1531, 748.1533, 748.1535, 748.1537, 748.1539, 748.1541, 748.1543, 748.1545, 748.1547, 748.1549, 748.1551

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.043.

§748.1531. What general medical requirements must my operation meet?

(a) A child in your care must receive medical care:

(1) Initially, according to the requirements in §748.1223 of this title (relating to What are the medical requirements when I admit a child into care?);

(2) As needed for injury, illness, and pain; and

(3) As needed for ongoing maintenance of medical health.

(b) The child's record must include a written record of each medical examination specifying:

(1) The date of the examination;

(2) The procedures completed;

(3) The follow-up treatment recommended and any appointments scheduled;

(4) The child's refusal to accept medical treatment, if applicable;

(5) The results of the medical examination that is signed and dated by the health-care professional who performed the examination; and

(6) If the medical examination is a result of an injury or medical incident, the documentation of the circumstances surrounding the incident, including the date and time of the incident.

(c) You must obtain follow-up medical treatment as recommended by the health-care professional.

§748.1533. Who determines the need and frequency for ongoing maintenance of medical care and treatment for a child?

A health-care professional determines the need and frequency for ongoing maintenance of medical care and treatment for a child.

§748.1535. Who must perform medical examinations and provide medical treatment for a child?

A health-care professional licensed in the state of Texas to practice medicine in his discipline must perform medical examinations and provide medical treatment for a child.

§748.1537. What information must I provide caregivers about a child's medical needs?

You must inform the child's caregivers of any special medical needs that the child has.

§748.1539. What immunizations must a child in my care have?

(a) Each child that you admit must meet and continue to meet the applicable immunization requirements specified by §42.043 of the Human Resources Code and the Department of State Health Services.

(b) You must maintain current immunizations records for each child in your care.

(c) Unless exempt, all immunizations required for the child's age must:

(1) Be completed by the date of admission; or

(2) Begin within 30 days after the date of admission.

§748.1541. What are the exemptions from immunization requirements?

Exemptions for immunization requirements must meet criteria specified by:

(1) §42.043 of the Human Resources Code; or

(2) The Department of State Health Services rules in 25 TAC §97.62 (relating to Exclusions from Compliance).

§748.1543. What documentation is acceptable for an immunization record?

(a) An immunization record must include:

(1) The child's name and birth date;

(2) The number of doses and vaccine type;

(3) The month, day, and year the child received each vaccination; and

(4) A signature or rubber stamp signature from the health-care professional who administered the vaccine.

(b) Documentation of an immunization record on file at your operation may be:

(1) The original record;

(2) A photocopy;

(3) An official immunization record generated from a state or local health authority, such as a registry; or

(4) A record received from school officials, including a record from another state.

§748.1545. Must children in my care have a vision and hearing screening?

(a) You must ensure that each child you admit is screened for possible vision and hearing problems that meet the requirements of the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36. If problems are detected, the child must have a professional vision and hearing examination.

(b) For each child required to be screened, you must keep one of the following in each child's record:

(1) The individual vision and hearing screening results;

(2) A signed statement from the child's parent that the child's screening records are current and on file at the program or school the child attends away from the operation. The statement must be dated and include the name, address, and telephone number of the program or school; or

(3) An affidavit from the child's parent stating that the vision or hearing screening and/or examination conflicts with the tenets or practices of a church or religious denomination of the parents.

§748.1547. What must I do if a child in my care is identified as needing a diagnostic vision or hearing examination?

You must:

(1) Schedule the child for a professional examination and needed health services;

(2) Ensure the professional and medical recommendations are carried out; and

(3) Convey the information concerning the child's visual and/or hearing difficulty to the educational and operation caregivers, so the recommended adjustments can be made in programs.

§748.1549. What special equipment must I provide for a child with a physical disability?

When recommended by a physician or other health-care professional, you must ensure that a child with a physical disability has any special equipment that can be reasonably obtained.

§748.1551. How often must the physician review a child with primary medical needs?

(a) A licensed physician must review a child's primary medical needs at least every 90 days and whenever a medical or related problem occurs.

(b) The review must address:

(1) Whether the child can continue to be cared for appropriately in the operation; and

(2) Any new or changed orders regarding the items outlined in §748.1219(3)(B) of this title (relating to What are the additional admission requirements when I admit a child for treatment services?).

(c) Documentation of each physician review must be filed in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601223

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. COMMUNICABLE DISEASES

40 TAC §§748.1581, 748.1583, 748.1585

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1581. What health precautions must I take if someone in my operation has a communicable disease?

(a) You must notify the Department of State Health Services (DSHS) after you become aware that a child in your care or an employee, student intern, or volunteer has contracted a communicable disease that the law requires you to report to the DSHS as specified in 25 TAC 97, Subchapter A (relating to Control of Communicable Diseases).

(b) If a child has symptoms of a communicable disease that is reportable to the Department of State Health Services, you must:

(1) Follow the treating physician's orders, which may include separating the child from other children in care;

(2) Notify the child's parent;

(3) Consult a health-care professional about the child's treatment; and

(4) Sanitize all items used by the sick child before another person uses one of them.

(c) If a health-care professional diagnoses a child with a communicable disease that may be spread through casual contact, a health-care professional must authorize the child's participation in routine activity at your operation. The authorization must:

(1) Be written and in the child's record;

(2) Include a statement that the child will not pose a serious threat to the health of the other children; and

(3) Include any specific instructions and precautions to be taken for the protection of the children.

(d) If an employee, student intern, or volunteer has a communicable disease that may be spread through casual contact, you must obtain written authorization from a health-care professional for the person to work with the children and be present at the operation. The written authorization must include a statement that the adult will not pose a serious threat to the health of the children.

(e) You must follow any written instructions and precautions specified by a health-care professional.

§748.1583. Who must have a tuberculosis (TB) examination?

(a) Requirements for tuberculosis screening and testing vary across the state. If you are unsure of the requirements for your area, contact the TB manager at the Department of State Health Services (DSHS) regional office nearest you.

(b) If your regional DSHS office or local health authority requires tuberculosis testing for children in your operation, then you must have a licensed health-care professional's statement verifying that each child in your care is free of active tuberculosis.

(c) Documentation of a TB screening is not required to be on file, if the TB testing is not required.

§748.1585. What must I do if someone in my operation has a positive tuberculosis test result?

When testing is required and the result is positive, you must:

(1) Follow through with all recommendations for further testing; and

(2) Carry out and document all public health precautions and treatment in accordance with the requirements of the regional Department of State Health Services or local health authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601224

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. PROTECTIVE DEVICES

40 TAC §§748.1611, 748.1613, 748.1615, 748.1617

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1611. What is a protective device?

(a) A protective device is a restraint device that:

(1) Protects a person from involuntary self-injurious behavior or permits wounds to heal; and

(2) Does not prohibit a person's mobility.

(b) Examples of a protective device are helmets, elbow guards, mittens, bedrails, and wheelchair seat belts.

(c) If used appropriately, devices intended to encourage mobility or minimally restrain a young child for safety purposes, such as wheelchairs, car seats, high chairs, strollers, and child leashes manufactured and sold specifically to harness a young child for safety purposes, are not protective devices.

§748.1613. What does "involuntary self-injurious behavior" mean when used in this division?

Involuntary self-injurious behavior means a person's physical movements that are automatic and not subject to control of the person's will that may inflict injury to the person.

§748.1615. May I use protective devices?

(a) You may use protective devices if:

(1) Your policies allow their use; and

(2) A licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the protective device is permitted.

(b) You may use bedrails that extend, from the head, half the length of the bed for assistance with mobility. However, you may not use bed rails that extend the entire length of the bed except when a physician authorizes it for a child with primary medical needs.

(c) You may not use protective devices as:

(1) Punishment;

(2) Retribution or retaliation;

(3) A means to get a child to comply;

(4) A convenience for caregivers or other persons; or

(5) A substitute for effective treatment or habilitation.

(d) You must document the use of protective devices in the child's record, service plan, and service plan reviews. The service planning team must discuss and document clinical justification for continued use of protective devices in the child's service plan review.

§748.1617. Who may use PRN orders with respect to protective devices?

A licensed physician ordering protective devices may use PRN orders. The physician must review PRN orders for protective devices at least every 90 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601225

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆
DIVISION 5. SUPPORTIVE DEVICES

40 TAC §§748.1631, 748.1633, 748.1635

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1631. What is a supportive device?

(a) A supportive device is a restraint device used:

(1) To support a person's posture;

(2) To assist a person who cannot obtain and/or maintain normal physical functioning to improve his mobility and independent functioning; or

(3) As an adjunct to proper care and treatment, for example physical therapy.

(b) The purpose of a supportive device is not to restrict movement.

§748.1633. May I use supportive devices?

(a) You may use supportive devices if:

(1) Your policies allow their use; and

(2) A licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the supportive device is permitted.

(b) You may not use a supportive device as a substitute for appropriate nursing care.

(c) You may not use supportive devices that include tying or depriving or limiting the use of a child's hands or feet.

(d) You may not use supportive devices as:

(1) Punishment;

(2) Retribution or retaliation;

(3) Means to get a child to comply;

(4) A convenience for caregivers or other persons; or

(5) A substitute for effective treatment or habilitation.

(e) If a device is not specifically for assisting with sleep or safety during sleep, you must remove the device during rest periods.

(f) You must document the use of supportive devices in the child's record, service plan, and service plan reviews. The service planning team must discuss and document clinical justification for continued use of supportive devices in the child's service plan review.

§748.1635. Who may use PRN orders with respect to supportive devices?

A licensed physician ordering supportive devices may use PRN orders. The physician must review PRN orders for supportive devices at least every 90 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601226

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. TOBACCO USE

40 TAC §748.1661

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.1661. What policies must I enforce regarding tobacco products?

- (a) A child may not use or possess tobacco products.
- (b) An adult may not use tobacco products in the children's living quarters or inside any building on your premises.
- (c) An adult may only use tobacco products on your premises:
 - (1) At a safe distance from the children's living quarters;
 - (2) Outside the presence of children.
- (d) No one may use tobacco products in motor vehicles when transporting children.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601227

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. NUTRITION AND HYDRATION

40 TAC §§748.1691, 748.1693, 748.1695, 748.1697, 748.1699, 748.1701, 748.1703, 748.1705, 748.1707, 748.1709

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1691. How often must I feed children in care?

- (a) You must feed an infant whenever the infant is hungry.
- (b) For a toddler or school-age child:
 - (1) You must provide the child with three meals and at least one snack a day; and
 - (2) No more than 14 hours may pass between the last meal or snack of the day and the serving of the first meal of the following day.

§748.1693. What type of food and water must I provide children?

- (a) You must provide a child with food that is:
 - (1) Of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development according to the United States Department of Agriculture guidelines; and
 - (2) Appropriate for the child's age and activity level.
- (b) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances to a child without written instructions from a licensed health-care professional.
- (c) You must ensure drinking water is always available to each child and is served in a safe and sanitary manner. Children must be well hydrated and must be encouraged to drink water during physical activity and in warm weather.

§748.1695. What are the specific requirements for feeding an infant?

- (a) You must feed the infant:
 - (1) On demand following the infant's lead on when to feed, how long to feed, and how much to feed; and
 - (2) Based on the recommendation of the infant's licensed physician, who must approve you giving the infant any milk other than fortified formula.
- (b) You must hold the infant while feeding him if the infant is:
 - (1) Birth through six months old; or
 - (2) Unable to sit unassisted in a high chair or other seating equipment during feeding.
- (c) You must never prop a bottle by supporting it with something other than the child or adult's hand.
- (d) If you care for more than one infant, you must:
 - (1) Label each bottle and training cup with the child's first name and initial of last name;
 - (2) Not permit the infant to share bottles or training cups;

and

- (3) Sanitize high chair trays before each use.

§748.1697. What are the specific requirements for feeding toddlers and older children?

- (a) A toddler or older child must eat meals in the dining areas.

(b) You must serve food in a way that encourages a child's self-help and development. This requirement also applies to non-mobile children.

§748.1699. What must I do if a child refuses to or cannot eat a meal or snack that I offer?

(a) You must offer a child a meal or snack according to this division, but you may not force the child to eat. You are not required to offer other food to a child who:

- (1) Refuses a meal or snack; or

(2) Chooses not to be present when a meal or snack is scheduled.

(b) You must discuss recurring eating problems with the child's parent.

(c) If a meal or snack is not appropriate to meet a child's individual needs, for example food allergies or religious reasons, then you must offer the child an appropriate nutritional substitute.

§748.1701. What must I do if a child requires a therapeutic or special diet?

(a) To serve a therapeutic or special diet to a child, you must have written approval in the child's record from a licensed physician or a registered or licensed dietitian.

(b) If a child requires a therapeutic or special diet, you must give the following people information regarding the diet:

- (1) All employees who prepare and serve food; and

- (2) The child's caregivers.

(c) You must make dietary alternatives available to a child who has special health needs.

§748.1703. What are the requirements for daily menus?

(a) You must maintain daily menus showing all meals and snacks that you prepare and serve.

(b) You must document food substitutions on the menu. Food substitutions must be of comparable food value.

- (c) You must date menus and keep copies for 90 days.

§748.1705. What are the nutrition requirements for a child with primary medical needs?

(a) You must feed a child with primary medical needs according to his medical and developmental needs.

(b) A licensed physician must prescribe tube feeding. A dietitian must plan the diet that the physician prescribes.

(c) Children must eat in an upright position unless the service planning team recommendations are to the contrary.

§748.1707. What are the requirements for tube-feeding formula?

(a) A registered or licensed dietitian, or a registered nurse must ensure the caregiver responsible for formula preparation is adequately trained.

(b) Tube feeding formulas must supply the recommended dietary allowance for each child.

- (c) You must:

(1) Prepare the formula no more than 24-hours before feeding; and

(2) Store it in bacteriologically safe, sanitized, and covered containers unless the tube-feeding formula is prepared immediately before administration.

(d) Tube-feeding formulas must be maintained at less than 40 degrees Fahrenheit.

§748.1709. What are the requirements for using a nasogastric tube to feed a child?

(a) Only a licensed nurse may insert a nasogastric tube according to a physician's written orders.

(b) You must document each insertion in the child's record. The documentation for each insertion must include the:

- (1) Signature of the nurse who inserted the tube; and

- (2) Date of the insertion.

(c) You must follow the physician's written orders concerning the tube.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601228

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§748.1741, 748.1743, 748.1745, 748.1747, 748.1749, 748.1751, 748.1753, 748.1755, 748.1757, 748.1759, 748.1761, 748.1763, 748.1765

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1741. What do certain words mean in this division?

These words have the following meaning in this division:

(1) Baby bungee jumper--A bucket seat that is suspended from a doorway by an elastic bungee cord that allows an infant to bounce while sitting in the seat.

(2) Baby walker--A baby walker allows an infant to sit inside the walker equipped with rollers or wheels and move across the floor.

(3) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

§748.1743. What are the basic care requirements for an infant?

(a) Each infant must receive individual attention, including playing, talking, cuddling, and holding.

(b) When an infant is upset, a caregiver must hold and comfort the infant.

(c) A caregiver must provide prompt attention to an infant's physical needs, such as feeding and diapering.

(d) An infant's caregiver must ensure that the environment is safe. For example, the caregiver must free the area of objects that may choke or harm the infant, take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.

(e) An infant's caregiver must never leave the infant unsupervised. A sleeping infant is considered supervised if the caregiver uses a video camera or audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

§748.1745. What steps must a caregiver follow when changing a child's diaper?

A caregiver must:

(1) Promptly change soiled or wet diapers or clothing;

(2) Thoroughly cleanse children with individual cloths or disposable towels;

(3) Use a clean, individual cloth or disposable towel to dry the child;

(4) Ensure that the child is dry before placing a new diaper on the child; and

(5) Keep all diaper-changing supplies out of children's reach.

§748.1747. What must I do to prevent the spread of germs when diapering children?

To prevent the spread of germs when diapering a child, you must:

(1) Wash your hands with soap and running water before and after diapering a child;

(2) Cover a container used for soiled diapers or keep it in a sanitary manner, such as placing soiled diapers in individual sealed bags;

(3) Discard a disposable towel after use; and

(4) Launder any cloth before reusing it.

§748.1749. What furnishings and equipment must I have in my infant care area?

Your infant care area must at a minimum include the following furnishings and equipment:

(1) An individual crib for each infant; and

(2) A sufficient number of toys to keep each child engaged in activities.

§748.1751. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;

(2) Sheets that fit snugly and do not present an entanglement hazard;

(3) A mattress that is waterproof or washable;

(4) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(5) A maximum of 2 3/8 inches between crib slats or poles;

(6) No corner posts over 1/16 inch above the end panels;

(7) No cutout areas in the headboard or footboard that would entrap a child's head or body; and

(8) Drop rails, if present, which fasten securely and cannot be opened by a child.

(b) You must sanitize each crib before a different child uses it and when soiled.

(c) You must never leave a child in the crib with the rails down.

(d) You may not have stackable cribs.

§748.1753. Are mesh cribs or port-a-cribs allowed?

You may use a full-size, portable, or mesh-side crib if:

(1) You follow the manufacturer's instructions;

(2) The crib has:

(A) A minimum height of 22 inches from the top of the railing to the mattress support at its lowest level;

(B) Mesh openings that are 1/4 inch or less;

(C) Mesh that is securely attached to top rail, side rail, and floor plate; and

(D) Folded sides that securely latch in place when raised; and

(3) You never leave a child in a mesh-sided crib with a side folded down.

§748.1755. What equipment must have safety straps before I can use it with an infant?

If you use a high chair, swing, stroller, infant carrier, rocker, bouncer seat, or a similar type of equipment for an infant:

(1) It must be equipped with safety straps; and

(2) The safety straps must be fastened whenever the infant is using the equipment.

§748.1757. What types of equipment are not allowed for use with infants?

(a) You may not use any of the following types of equipment with infants:

(1) Baby walkers;

(2) Baby bungee jumpers;

(3) Accordion safety gates;

(4) Toys that are small enough to swallow or choke a child; and

(5) Bean bags, waterbeds, and foam pads for use as sleeping equipment.

(b) You may not use soft bedding, such as stuffed toys, quilts, pillows, bumper pads, and comforters in a crib for an infant six months old or younger.

§748.1759. What activities must I provide for infants?

You must provide the following activities for an infant:

- (1) Multiple opportunities each day to explore in a safe and clean area that is outside the crib or other confining equipment;
- (2) Opportunities for visual, auditory, and sensory stimulation;
- (3) Opportunities for small- and large-muscle development; and
- (4) A supervised nap period that allows the infant to maintain the child's own pattern of sleeping and waking.

§748.1761. How long may an infant remain in a crib after awakening?

An infant may remain in the crib or other confining equipment for up to 30 minutes after awakening, as long as the infant is content and responsive.

§748.1763. Are infants required to sleep on their backs?

Yes. You must place an infant not yet able to turn over on his own in a face-up sleeping position.

§748.1765. If an infant has difficulty falling asleep, may the infant's head or crib be covered?

No. An infant must not have his head, face, or crib covered at any time by an item such as a blanket, linen, or clothing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601229

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. ADDITIONAL REQUIREMENTS FOR TODDLER CARE

40 TAC §§748.1791, 748.1793, 748.1795

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1791. What are the basic care requirements for a toddler?

(a) Each toddler must receive individual attention, including playing, talking, and cuddling.

(b) A toddler's caregiver must ensure that the environment is safe. For example, the caregiver must free the area of objects that may

choke or harm the infant, take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.

(c) A toddler's caregiver must never leave the toddler unsupervised. A sleeping toddler is considered supervised if the caregiver uses a video camera or audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

§748.1793. What furnishings and equipment must I provide for toddlers?

Furnishings and equipment for toddlers must at a minimum include the following:

(1) Age-appropriate seating, tables, and nap and sleep equipment. Toddlers may use cribs or beds, as appropriate;

(2) Enough popular items available, so a toddler is not forced to compete for them; and

(3) Containers or low shelving, so items that can be safely used without direct supervision are accessible to children.

§748.1795. What activities must I provide for toddlers?

You must provide the following activities for a toddler:

(1) Daily opportunities for outdoor play, when weather permits;

(2) Opportunities for thinking skills and sensory development;

(3) Opportunities for small and large-muscle development;

(4) Opportunities for language development;

(5) Opportunities for social/emotional development;

(6) Opportunities to develop self-help skills such as toiletting, hand washing, and feeding; and

(7) Supervised naptimes. You must provide a supervised sleep or rest period after the noon meal for all toddlers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601230

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 10. ADDITIONAL REQUIREMENTS FOR PREGNANT CHILDREN

40 TAC §§748.1821, 748.1823, 748.1825

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1821. What information must I provide a pregnant child regarding her pregnancy?

You must:

(1) Ensure information, training, and counseling is available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth;

(2) Ensure the pregnant child receives nutritional counseling and guidance that meets generally accepted standards, including nutrition during pregnancy, lactation, and foods to avoid;

(3) Inform the child of her right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child; and

(4) Document in the child's record the information and counseling that you provide.

§748.1823. Is the use of emergency behavior intervention of a pregnant child permitted in my operation?

If your policies allow for the use of personal restraints on a pregnant child:

(1) The health-care professional attending to the child's pregnancy must document whether any type of emergency behavior intervention that your policies allow is inadvisable; and

(2) You may not use any emergency behavior intervention that the child's health-care professional attending to her pregnancy finds inadvisable.

§748.1825. If my policies permit the admission of adolescent parents with their child(ren), who is responsible for the care of the adolescent's child(ren)?

If your policies permit the admission of adolescent parents with their child(ren):

(1) An adolescent parent must provide most of the care for her child;

(2) Caregivers must be available to the adolescent parent as a resource and support; and

(3) When you care for an adolescent's child in the adolescent parent's absence, you are responsible for that child as if the child is in your care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601231

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER K. OPERATIONS THAT PROVIDE CARE FOR CHILDREN AND ADULTS

DIVISION 1. SCOPE

40 TAC §748.1901

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.1901. What operations do the rules in this subchapter apply to?

The rules in this subchapter apply to operations that provide care for both children and adults.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601232

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. GENERAL REQUIREMENTS

40 TAC §§748.1931, 748.1933, 748.1935, 748.1937, 748.1939, 748.1941, 748.1943, 748.1945

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.1931. After a child in my care turns 18 years old, may the person remain in my care?

(a) A young adult may remain in your care in order to:

(1) Transition to independence;

(2) Complete the school year;

(3) Complete your program; or

(4) Stay with a minor sibling.

(b) A young adult who turns 18 in your care may remain in your care indefinitely if the person:

(1) Continues to need the same level of care; and

(2) Is unlikely to physically and/or intellectually progress over time.

§748.1933. May I admit a young adult into care if the young adult is moving from another residential child-care operation?

Yes, you may admit a young adult into your operation from another residential child-care operation if the reason for admittance is consistent with a condition listed in §748.1931 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?).

§748.1935. How does the child/caregiver ratio apply if I provide care to both children and adults?

(a) If you provide care to both children and adults, you may maintain the required child/caregiver ratio by:

(1) Counting all residents in your care as children and maintaining the appropriate ratio; or

(2) Assigning caregivers to work exclusively with the children in care.

(b) The child/caregiver ratio for minor and adult residents applies to operation-sponsored activities or appointments, regardless of where they occur.

(c) You may not count adult residents as caregivers in the child/caregiver ratio.

§748.1937. May an adult resident share a bedroom with a child resident?

(a) An adult resident may share a bedroom with a child resident if:

(1) The service planning team determines there are no risks to either of them after assessing the following:

(A) Their behaviors;

(B) Their compatibility with each other;

(C) Their respective relationships;

(D) Any past history of sexual trauma or sexually inappropriate behavior; and

(E) Appropriateness; and

(2) Their age difference is less than two years.

(b) The assessment and approval by the service planning team must be documented and dated in the child's record.

§748.1939. How much general living space and floor space in a bedroom must I provide for children and young adults who are in my care?

For adult residents, you must meet the space requirements listed in §748.3351 of this title (relating to What are the requirements for general living space?) and §748.3357 of this title (relating to What are the requirements for floor space in a bedroom used by a child?).

§748.1941. What must I do if an adult resident is responsible for his own medication?

If an adult resident is responsible for his own medication, you must:

(1) Establish written safeguards to prevent children in care from having access to the medications; and

(2) Implement the safeguards.

§748.1943. Must adult residents have a tuberculosis (TB) examination?

Yes. You must meet the requirements listed in §748.509 of this title (relating to What are the requirements for tuberculosis testing?) and §748.511 of this title (relating to How do I document the recommendations of a local health authority or the regional Department of State Health Services for tuberculosis testing?).

§748.1945. What must I do if an adult resident has a positive tuberculosis test result?

You must meet the requirements listed in §748.1585 of this title (relating to What must I do if someone in my operation has a positive tuberculosis test result?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601233

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER L. MEDICATION

DIVISION 1. ADMINISTRATION OF MEDICATION

40 TAC §§748.2001, 748.2003, 748.2005, 748.2007, 748.2009

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2001. What consent must I obtain to administer medications?

(a) You must obtain a general written consent to administer routine, preventive, and emergency medications.

(b) You must obtain the written, signed, and dated consent from the person legally authorized to give medical consent before administering the medication.

§748.2003. What medication requirements must my operation meet?

(a) To the best of your knowledge, you must inform the person legally authorized to give medical consent of the benefits, risks, and side effects of all medication and treatment procedures used and the medical consequences of refusing them, and/or provide the name and telephone number of the prescribing health-care professional for more information.

(b) You must:

(1) Be informed about possible side effects of medications administered to the child;

(2) Ensure a person trained in and authorized to administer medication administers medication to a child in care unless the child is on a self-medication program;

(3) Administer medications according to the instructions on the label or according to a prescribing health-care professional's subsequent signed orders (See §748.2005 of this title (relating to May I accept verbal instructions on the administration of medication?));

(4) Administer each child's medication immediately after preparation;

(5) Ensure the child has taken the medication as prescribed;

(6) Maintain any documentation provided by the health-care professional on the administration of current medication;

(7) Not physically force a child to take prescription medication;

(8) Ensure that your employees do not provide any medication or treatment to a child except on written orders of a health-care professional;

(9) Not borrow or administer medication to a child that is prescribed to another person;

(10) Store medication in the original container as received from the pharmacy or health-care professional unless you have an additional container with the same pharmacist's label and instructions; and

(11) Not administer prescription medication to more than one child from the same container. Only the child for whom the prescription medication was prescribed may use the medication.

§748.2005. May I accept verbal instructions on the administration of medication?

Assuming you have obtained written consent according to §748.2001 of this title (relating to What consent must I obtain to administer medications?), a licensed health-care professional may provide verbal instructions on the administration of medication. However, the health-care professional must write and sign orders within 72 hours of the verbal order.

§748.2007. What is over-the-counter medication?

Over-the-counter medication is a drug that does not require a prescription from a health-care professional for purchase. A written prescription for an over-the-counter drug does not make the drug a prescription drug. However, a prescribed over-the-counter drug must be administered and documented per the physician prescription.

§748.2009. What are the requirements for administering over-the-counter medication and non-prescription vitamins?

(a) You must follow the label and ensure the over-the-counter medication is not contraindicated with any other medication prescribed to the child or the child's medical conditions.

(b) You may give an over-the-counter medication or non-prescription vitamins to more than one child from one container.

(c) Documentation of approved over-the-counter medication and non-prescription vitamins for each child must be maintained in the medication record that must be incorporated into the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.
TRD-200601234

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 2. SELF-ADMINISTRATION OF MEDICATION

40 TAC §748.2051, §748.2053

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2051. What are the requirements for a self-medication program?

For a child to be on a self-medication program:

(1) The child's health-care professional must give written authorization for the child to be on the program;

(2) The child's service plan must include the self-medication program and any requirements for caregiver supervision; and

(3) You must notify the parent and the person legally authorized to give medical consent that the child is on the program.

§748.2053. Who must record the medication dosage if a child is on a self-medication program?

When a child who is on a self-medication program takes a dosage of the medication, the child may:

(1) Record the dosage if you have a system for reviewing the child's medication each day; or

(2) Report the medication to an appropriate employee or service provider, who must then do the actual recording.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601235
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 3. MEDICATION STORAGE AND DESTRUCTION

40 TAC §748.2101, §748.2103

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2101. What medication storage requirements must my operation meet?

You must:

(1) Store medication in a locked container that requires a key to unlock it;

(2) Keep medication inaccessible other than to employees responsible for stored medication;

(3) Ensure the medication storage area has a separate locked container where medications "for external use only" are stored separately from other medications;

(4) Store medication covered by Section II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the room where medications are stored;

(5) Make provisions for securely storing medication that requires refrigeration;

(6) Keep medication storage area(s) clean and orderly;

(7) Remove discontinued medication from the medication area within 90 days of the discontinuance date and properly destroy it;

(8) Remove medication on or before the expiration date and properly destroy it; and

(9) Remove medication of a discharged or deceased child immediately and properly destroy it.

§748.2103. What are the requirements for discontinued or expired medication?

(a) Discontinued or expired medication and medication left at your operation must be inventoried and stored as directed by the administrator.

(b) When you have an accumulation of this medication, the administrator or a designee and another adult who is not a resident must destroy the discontinued or expired medication in accordance with state and federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601236

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 4. MEDICATION RECORDS

40 TAC §748.2151

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.2151. What records must I maintain for each child receiving medication?

(a) You must maintain a cumulative record of all prescription and nonprescription medication dispensed to the child. You must maintain the medication record during the time that you provide services to the child. This record must include the:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable; and

(3) Medication name, strength, and dosage.

(b) Each time the child receives a dosage of the medication, the person who administers the medication must immediately document the:

(1) Date (day, month, and year) and time the medication was administered;

(2) Name and signature of the person who administered the medication; and

(3) Child's refusal to accept medication, if applicable.

(c) For PRN prescriptions or over-the-counter medications, you must document the reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that you are treating.

(d) You must keep a running count of each child's prescribed medication. The medication count must match the medication documentation.

(e) The medication records of prescription and nonprescription medication dispensed to the child must be incorporated into the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601237

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 5. MEDICATION AND LABEL ERRORS

40 TAC §§748.2201, 748.2203, 748.2205

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2201. What is a medication error?

A medication error includes, but is not limited to, the following:

- (1) A child receives the wrong medication;
- (2) A child receives medication prescribed for someone else;
- (3) A child receives the wrong dosage of medication;
- (4) A child receives medication at the wrong time;
- (5) A medication dose is skipped or missed;
- (6) A child receives expired medication;
- (7) Not following the medication administration instructions, such as giving a child medication on an empty stomach when the medication should be given with food; and
- (8) A child receives medication that was not stored as required to maintain the effectiveness of the medication, such as refrigerating or not refrigerating the medication, as required, or exposing the medication to heat or sunlight.

§748.2203. What must I do if I find a medication error?

(a) If you find a medication error regarding a prescribed medication, you must contact a health-care professional immediately, unless the error is the type described in paragraph (4) or (5) of §748.2201 of this title (relating to What is a medication error?), and follow the health-care professional's recommendations.

(b) If you find a medication error regarding an over-the-counter medication, you must take the appropriate and necessary actions as required by the circumstances.

(c) For all medication errors, you must document the following within 24 hours:

- (1) The time and date of the error;
- (2) The medication error;
- (3) The time and date of the call(s) to the licensed health-care professional, if applicable;
- (4) The name and title of the health-care professional contacted, if applicable; and
- (5) The health-care professional's medical recommendations for ensuring the child's safety, if applicable.

§748.2205. What must I do if I find a medication label error?

If you find a medication label error, you must:

- (1) Report the error to the pharmacist; and
- (2) Have the label on the medication container corrected immediately.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601238

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

40 TAC §748.2231, §748.2233

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2231. What must I do if a child has an adverse reaction to a medication?

If a child has an adverse reaction to a medication, you must:

- (1) Immediately report the reaction to a health-care professional;
- (2) Follow the health-care professional's recommendations;
- (3) Seek further medical care for the child if the child's condition appears to worsen; and
- (4) Document in the child's medical record the:
 - (A) Adverse reactions that the child had to the medication;
 - (B) Time and date of call(s) to the health-care professional;
 - (C) Name and title of the health-care professional contacted; and
 - (D) Health-care professional's medical recommendations for ensuring the child's safety.

§748.2233. What must I do if a child experiences side effects from any medications?

If a child experiences side effects from any medication, the caregiver must:

- (1) Document the observed and reported side effects;

(2) Immediately report any serious side effects to the child's physician; and

(3) Report any other side effect to the prescribing physician within 72 hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601239

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. USE OF PSYCHOTROPIC MEDICATION

40 TAC §§748.2251, 748.2253, 748.2255, 748.2257, 748.2259, 748.2261

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2251. What additional consent must I obtain to administer psychotropic medication?

(a) You must obtain consent from a person legally authorized to give medical consent before administering a new prescription for a psychotropic medication to a child. The consent must be specific regarding the psychotropic medication to be administered.

(b) The written consent must be signed and dated.

§748.2253. If my operation employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give consent before requesting his consent for the child to be placed on psychotropic medication?

(a) Before requesting the person's written consent to give the child psychotropic medication, the prescribing health-care professional must give the following in writing or document a discussion with the person or a combination of both:

(1) The child's diagnosis;

(2) The nature of the child's mental illness or condition;

(3) An explanation of the purpose of the medication;

(4) A description of the benefits expected;

(5) A description of any accompanying discomforts and risks, including those which could result from long-term use of the

medication, and possible side effects, including side effects that are known to frequently occur in persons, side effects to which the child may be predisposed, and the nature and possible occurrence of irreversible symptoms;

(6) A statement of whether the medication is habituating in nature;

(7) Alternative interventions to the use of psychotropic medication that have been attempted and that have been unsuccessful;

(8) Other alternative treatments or procedures to the use of the psychotropic medication;

(9) Risks and benefits of the alternative treatments or procedures;

(10) Risks and benefits of not receiving or undergoing a treatment or procedure;

(11) An explanation that the person legally authorized to give medical consent may ask questions about the child's response to the medication, and may review your daily records on request; and

(12) An explanation that the person legally authorized to give medical consent may withdraw consent and request the medication be discontinued at any time.

(b) The health-care professional must offer to answer any questions the person legally authorized to give consent has about the medication.

(c) The person must sign a consent form that acknowledges that you have provided all of the information set forth in subsection (a) of this section. A copy of this signed consent form must be filed in the child's record.

§748.2255. If my operation does not employ or contract with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give medical consent prior to the health-care professional prescribing psychotropic medications to a child in care?

If you are requesting consent and the person legally authorized to give consent is not privy to this information, you must:

(1) Before requesting the person's written consent to give the child psychotropic medication, provide information in writing or document a discussion with the person regarding:

(A) The nature of the child's mental illness or condition;

(B) A general explanation of the purpose of the medication;

(C) A general description of the benefits expected;

(D) An explanation that the person may ask questions about the child's response to the medication; and

(E) An explanation that the person may withdraw medical consent and request the medication be discontinued at any time.

(2) Offer to answer any questions the person legally authorized to give medical consent has about the medication and/or provide the name and telephone number of the prescribing health-care professional for further information.

(3) Obtain a signed consent form from the person legally authorized to give medical consent that acknowledges that you have provided all of the information set forth in paragraph (1) of this section. A copy of this signed consent form must be filed in the child's record.

§748.2257. What are the requirements if a physician orders administration of a psychotropic medication to a child in an emergency?

(a) If a physician has made a determination that there is an emergency according to §266.009 of the Family Code and the emergency requires the administration of a psychotropic medication, then you must follow the physician's orders and do not have to obtain consent prior to the administration of the medication.

(b) Within 72 hours after you have administered the medication, you must notify the parent and the person legally authorized to give medical consent.

(c) The physician's statement regarding the emergency and the prescription must be documented in the child's record.

§748.2259. What information must I document about a child's use of psychotropic medication?

(a) You must maintain a daily record of the child's use of such medication according to the requirements in §748.2151 of this title (relating to What records must I maintain for each child receiving medication?).

(b) You must document in the child's medication record a description of the child's response to the medication and an assessment of its effectiveness at least quarterly.

(c) You must provide the information in subsection (b) of this section to the prescribing health-care professional or the child's current health-care professional to use in evaluating the appropriateness of continuing the medication. You must document the health-care professional's evaluation and review in the child's record.

§748.2261. If my operation employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what are the requirements for evaluating whether a child should continue taking a psychotropic medication?

(a) If a child takes psychotropic medications, the prescribing health-care professional must evaluate and document in the child's medication record a description of the child's response to the medication and an assessment of its effectiveness and the appropriateness of continuing the medication at least quarterly. The written evaluation must include any reasons for discontinuing the medication.

(b) If the health-care professional decides that he can evaluate the appropriateness of continuing the medication without seeing the child, you do not have to schedule an appointment for the evaluation.

(c) The health-care professional must consider the target symptoms and treatment goals in evaluating the child's use of psychotropic medications.

(d) The health-care professional must document whether the child needs to continue taking the medication. You must document the health-care professional's decision in the child's record.

(e) If the health-care professional does not substantiate the effectiveness of a specific psychotropic medication within 90 days, the health-care professional must provide a written rationale for continuing the medication for an additional period. The continuation of the medication may not exceed an additional 90 days (for a total of 180 days) if effectiveness is not substantiated by the health-care professional. A copy of the written rationale must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.
TRD-200601240

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER M. DISCIPLINE AND PUNISHMENT

40 TAC §§748.2301, 748.2303, 748.2305, 748.2307, 748.2309, 748.2311

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2301. What are the requirements for disciplinary measures?

(a) Only a caregiver known to and knowledgeable of a child may discipline the child.

(b) Each disciplinary measure must:

- (1) Be consistent with your policies and procedures;
- (2) Not be physically or emotionally damaging to the child;
- (3) Be individualized to meet each child's needs;
- (4) Be appropriate to the child's level of understanding, age, and developmental level; and
- (5) Be appropriate to the incident and severity of the behavior demonstrated.

(c) Each disciplinary measure must be tailored to teach the child acceptable behavior and self-control. The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

§748.2303. May I use corporal punishment for children in care?

(a) You may not use or threaten to use corporal punishment with any child in care.

(b) Corporal punishment is the infliction of physical pain on any part of a child's body as a means of controlling or managing the child's behavior. It includes:

- (1) Hitting or spanking a child with a hand or instrument;
- or
- (2) Forcing or requiring the child to do any of the following as a method of managing or controlling behavior:
 - (A) Perform any form of physical exercise, such as running laps or doing sit ups or push ups;
 - (B) Hold a physical position, such as kneeling or squatting; or
 - (C) Do any form of "unproductive work."

§748.2305. What is "unproductive work"?

(a) "Unproductive work" is work that serves no purpose except to demean the child. Examples include moving rocks or logs from one pile to another or digging a hole and then filling it in. Unproductive work is never an appropriate behavior management tool.

(b) "Unproductive work" does not include work that corrects damage that the child's behavior caused. For example, you may require a child who defaces a fence or wall to repaint it. This example includes a logical consequence and is an acceptable behavior management tool.

§748.2307. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include:

- (1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment;
- (2) Denial of mail or visits with their families as discipline or punishment;
- (3) Threatening with the loss of placement as discipline or punishment;
- (4) Using sarcastic or cruel humor, and verbal abuse;
- (5) Standing in a corner or maintaining an uncomfortable physical position, such as kneeling, or holding his arms out;
- (6) Pinching, pulling hair, or biting a child;
- (7) Putting anything in or on a child's mouth, such as soap or tape;
- (8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;
- (9) Subjecting a child to harsh, abusive, or profane language;
- (10) Placing a child in a dark room, bathroom, or closet;
- (11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;
- (12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;
- (13) Denying basic child rights as discipline or punishment;
- (14) Withholding food that meets the child's nutritional requirements; and
- (15) Using or threatening to use emergency behavior intervention as discipline or punishment.

§748.2309. To what extent may I restrict a child's activities as a behavior management tool?

(a) Within limits, a caregiver may restrict a child's activities as a behavior management tool.

(b) Restrictions of activities, other than school or chores, which will be imposed on a child for more than seven days, must have prior approval by the treatment director, service planning team, or professional level service provider.

(c) Restrictions to communication and visitation with family that will be imposed on a child must have prior approval by the treatment director, service planning team, or professional level service provider.

(d) Restrictions to a particular room or building that will be imposed on a child for more than 24 hours must have prior approval

by the treatment director, service planning team, or professional level service provider.

(e) You must inform the child and parent about any restrictions that you place on the child.

(f) Documentation of all approvals, justification for the restriction, and informing the child and parents must be in the child's record.

§748.2311. May a child or adult in care discipline or punish another person in care?

No. A person in care must not discipline or punish another person in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601241

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

40 TAC §748.2401

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.2401. What do certain words mean in this subchapter?

These words have the following meaning in this subchapter:

(1) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.

(2) De-escalation--See §748.43(12) of this title (relating to What do certain words and terms mean in this chapter?).

(3) Emergency behavior intervention--See §748.43(17) of this title.

(4) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify

a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl for an allergic reaction or medication to control seizures), is not emergency medication and is not regulated as such under this chapter.

(5) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(6) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(7) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(8) PRN--See §748.43(35) of this title.

(9) Prone restraint--Placing a child in a chest down restraint hold.

(10) Quiet time--A type of behavior modification where a child voluntarily enters and remains in a designated area for a certain period of time.

(11) Seclusion--A type of emergency behavior intervention that places a child, for any period of time, in a room or other area where the child is alone and is physically prevented from leaving by a locked or barricaded entryway. An intervention that restricts a child to a room, but involves a caregiver placing his body between the child and the exit from that area (e.g. standing in the doorway of a room), is not seclusion because the child is not alone.

(12) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(13) Supine restraint--Placing a child in a chest up restraint hold.

(14) Time out--A type of behavior modification where a child is restricted to a designated area, including his room, for a certain period of time, but the child is not physically prevented from leaving by a locked or barricaded entryway.

(15) Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.

(16) Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time (e.g. three seclusions within a seven-day period).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601242

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §§748.2451, 748.2453, 748.2455, 748.2457, 748.2459, 748.2461, 748.2463

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2451. What types of emergency behavior intervention may I administer?

(a) If permitted in your policies and you meet the requirements of this subchapter, you may administer the following types of emergency behavior intervention to a child in your care:

- (1) Short personal restraint;
- (2) Personal restraint;
- (3) Emergency medication;
- (4) Seclusion:

(A) Only for children with emotional disorders or pervasive developmental disorders; and only if you provide treatment services to 25 or more children with emotional disorders or pervasive developmental disorders, or if more than 30% of the children in your care receive treatment services for emotional disorders or pervasive developmental disorders. Seclusion is not permitted for children receiving therapeutic camp services; or

(B) Only if you provide emergency care services to the child and only while waiting for the arrival of law enforcement or emergency medical services; and

(5) Mechanical restraint, only if you have a Residential Treatment Center permit.

(b) You may never administer chemical restraints.

(c) Protective and supportive devices are not considered emergency behavior interventions. For information on protective and sup-

portive devices, see Divisions 4 and 5 of Subchapter J of this chapter (relating to Child Care.)

§748.2453. Who may administer emergency behavior intervention?

Only a caregiver qualified in emergency behavior intervention may administer any form of emergency behavior intervention, except for the short personal restraint of a child five years old or younger.

§748.2455. What actions must a caregiver take before using a permitted type of emergency behavior intervention?

Before using a permitted type of emergency behavior intervention, the caregiver must:

(1) Attempt less restrictive behavior interventions that prove to be ineffective at defusing the situation; and

(2) Determine that the basis for the emergency behavior intervention is:

(A) An emergency situation;

(B) A need for a personal restraint to administer intramuscular medication or other medical treatments prescribed by a licensed physician, such as administering insulin to a child with diabetes; or

(C) A need for a personal restraint in a general residential operation where a child is significantly damaging property, such as breaking car windows or putting holes into walls. If this is the basis of the personal restraint, only a transitional hold may be used and only to prevent the damage.

§748.2457. What requirements must I meet in the use of less restrictive behavior interventions?

(a) Caregivers must follow your policies and procedures for attempting less restrictive interventions.

(b) Less restrictive measures include quiet time and time out.

§748.2459. What is the appropriate use for a short personal restraint?

Generally, a short personal restraint is used in emergency situations and other urgent situations, such as:

(1) To intervene when a child under five years old (chronological or developmental age) demonstrates disruptive behavior, if other efforts to de-escalate the child's behavior have failed; or

(2) When a child over five years old demonstrates behavior disruptive to the environment or milieu, such as disrobing in public, provoking others that creates a safety risk, or to intervene to prevent a child from physically fighting.

§748.2461. What precautions must a caregiver take when implementing a short personal restraint?

(a) When a caregiver implements a short personal restraint, the caregiver must:

(1) Minimize the risk of physical discomfort, harm, or pain to the child; and

(2) Use the minimal amount of reasonable and necessary physical force.

(b) A caregiver may not use any of the following techniques:

(1) A prone or supine restraint;

(2) Restraints that impair the child's breathing by putting pressure on the child's torso, including leaning a child forward during a seated restraint and basket holds;

(3) Restraints that obstruct the airways of the child or impair the breathing of the child, including procedures that place anything in, on, or over the child's mouth, nose, or neck, or impede the child's lungs from expanding;

(4) Restraints that obstruct the caregiver's view of the child's face;

(5) Restraints that interfere with the child's ability to communicate or vocalize distress; or

(6) Restraints that twist or place the child's limb(s) behind the child's back.

§748.2463. Are there any purposes for which emergency behavior intervention cannot be used?

Emergency behavior intervention may never be used as:

(1) Punishment;

(2) Retribution or retaliation;

(3) A means to get a child to comply;

(4) A convenience for caregivers or other persons; or

(5) A substitute for effective treatment or habilitation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601243

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. ORDERS

40 TAC §§748.2501, 748.2503, 748.2505, 748.2507

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2501. Are written orders required to administer emergency behavior intervention, and if so, who can write them?

According to the following chart, written orders by certain professionals are required to administer certain emergency behavior intervention:
Figure: 40 TAC §748.2501

§748.2503. Must the written order be in a child's record before a caregiver can use an emergency behavior intervention on a child?

Yes, any type of written order that is required, must be in the child's record before a caregiver can use emergency behavior intervention on

that child, except for seclusion when it is necessary to prevent the child from endangering himself or others. In this seclusion situation, a licensed psychiatrist, psychologist, or physician must provide a verbal order within one hour after a caregiver initiates the seclusion. The caregiver must document this order, and the professional who provides the verbal order must provide a written version of the order within 72 hours after issuing the order. The written copy must include the time, date, and the professional's signature.

§748.2505. What information must a written order include?

(a) All written orders must include the following:

(1) A statement that the particular type of emergency behavior intervention may only be used in an emergency situation;

(2) Designation of the specific intervention and procedure or technique that is authorized;

(3) Any specific measures for ensuring the child's health, safety, and well being, and the privacy of the setting that safeguards the child's personal dignity;

(4) A complete description of the behaviors and circumstances under which the intervention may be used;

(5) Instructions for observation or heightened observation of the child during the intervention;

(6) The behaviors that indicate the child is ready to be released from the intervention;

(7) The maximum length of time the child may be restrained or secluded regardless of behaviors exhibited;

(8) The prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention; and

(9) Clinical justification for the intervention.

(b) For personal restraint, the written order must also include:

(1) The number of times a child may be restrained in a seven-day period; and

(2) If the orders allow more than three restraints within a seven-day period, a plan for reducing the need for intervention.

(c) For emergency medication, the written order must also include instructions on how to administer the medication.

(d) For mechanical restraint, the written order must also include the specific device or devices authorized.

§748.2507. Under what conditions are PRN orders permitted for a specific child?

PRN orders for certain emergency behavior interventions are permitted under the following conditions:

Figure: 40 TAC §748.2507

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601244

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2551, §748.2553

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2551. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?

(a) The use of emergency behavior intervention must be an appropriate response to the behavior demonstrated, and de-escalation must have failed.

(b) The caregiver must act to protect the child's safety and consider:

(1) The characteristics of the immediate physical environment;

(2) The permitted types of emergency behavior intervention; and

(3) The potential risk of harm in using emergency behavior intervention versus the risk of not using emergency behavior intervention.

(c) The caregiver must:

(1) Initiate an emergency behavior intervention in a way that minimizes the risk of physical discomfort, harm, or pain to the child; and

(2) Use the minimal amount of reasonable and necessary physical force to implement the intervention.

(d) The caregiver must make every effort to protect the child's:

(1) Privacy, including shielding the child from onlookers; and

(2) Personal dignity and well-being, including ensuring that the child's body is appropriately covered.

(e) As soon as possible after starting any type of emergency behavior intervention, the caregiver must:

(1) Explain to the child the behaviors the child must exhibit to be released or have the intervention reduced, if applicable; and

(2) Permit the child to suggest actions the caregivers can take to help the child de-escalate.

(f) If the child does not appear to understand what he must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

§748.2553. When must a caregiver release a child from an emergency behavior intervention?

A child must be released as follows:

Figure: 40 TAC §748.2553

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601245

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §§748.2601, 748.2603, 748.2605

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2601. Who must monitor a personal restraint?

(a) During any personal restraint, a caregiver qualified in emergency behavior intervention must monitor the child's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being.

(b) The caregiver monitoring the child should not be the same caregiver that is restraining the child.

§748.2603. What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates he cannot breathe and immediately seeking medical assistance from a health-care professional.

§748.2605. What personal restraint, including short personal restraint, techniques are prohibited?

(a) The following personal restraint, including short personal restraint techniques are prohibited:

(1) Restraints that impair the child's breathing by putting pressure on the child's torso, including restraints that obstruct the child's lungs from expanding such as leaning a child forward during a seated restraint, or basket holds;

(2) Restraints that obstruct the child's airway, including procedures that place anything in, on, or over the child's mouth, nose, or neck;

(3) Restraints that obstruct a caregiver's ability to view the child's face;

(4) Restraints that interfere with the child's ability to communicate or vocalize distress; or

(5) Restraints that twist or place the child's limb(s) behind the child's back.

(b) Prone and supine restraints except:

(1) As a transitional hold that lasts no longer than one minute;

(2) As a last resort when other less restrictive interventions have proven to be ineffective; and

(3) When an observer meeting the following qualifications ensures the child's breathing is not impaired:

(A) Trained to identify risks associated with positional, compression, or restraint asphyxia;

(B) Trained to identify risks associated with prone and supine holds; and

(C) Not involved in the restraint. General residential operations and residential treatment centers with a capacity of 16 or fewer children are exempt from meeting this requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601246

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF SECLUSION

40 TAC §§748.2651, 748.2653

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2651. What are the additional responsibilities for implementing seclusion?

(a) Caregivers must continuously observe the child placed in seclusion. This observation can take place through a window or a one-way mirror. The use of a video camera to continuously observe a child in seclusion is not permitted.

(b) There must be a protected, private, and observable environment or room that safeguards the child's personal dignity and well-being that must:

(1) Have 40 square-feet of floor space and a ceiling height of at least eight feet;

(2) Be free of safety hazards;

(3) Be adequately ventilated during warm weather and adequately heated during cold weather;

(4) Be appropriately lighted; and

(5) Have a mat and bedding, unless the prescribing professional writes orders to the contrary.

§748.2653. What must occur for a caregiver to remove the mat or bedding without a written order?

(a) If a caregiver cannot obtain a written order to remove the mat or bedding, the caregiver must obtain and document a licensed psychiatrist's, psychologist's, or physician's verbal order with the rationale for the removal no later than one hour following the intervention.

(b) The verbal order must include an evaluation by the psychiatrist, psychologist, or physician assessing whether seclusion is the most appropriate intervention for the child given the situation.

(c) The professional who provides the verbal order must provide a written version of the order within 72 hours of issuing the order. The written copy must include the time, date, and the professional's signature.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601247

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A MECHANICAL RESTRAINT

40 TAC §§748.2701, 748.2703, 748.2705

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2701. What are the additional responsibilities for implementing a mechanical restraint?

(a) Only commercially available devices specifically designed for the safe and comfortable restraint of humans may be used as mechanical restraints.

(b) Mechanical restraint devices must be inspected after each use to ensure that they are in good repair and are free from tears or protrusions that may cause injury. Damaged devices may not be used to restrain a child.

(c) There must be a protected, private, and observable environment or room that safeguards the child's personal dignity and well-being.

(d) Caregivers must continuously observe the child placed in mechanical restraint ensuring the child has adequate respiration, circulation, and overall well-being. This observation can take place through a window or a one-way mirror. The use of a video camera to continuously observe a child in mechanical restraint is not permitted. In addition to continual observation, a caregiver must check for circulation, skin color, and respiration at least every 15 minutes.

§748.2703. May my residential treatment center use altered mechanical restraint devices when restraining a child?

Yes; however, any alteration of commercially available mechanical restraint devices must be reviewed and approved by a licensed psychiatrist who must:

(1) Base his approval on the individual child's special physical needs; and

(2) Take into consideration any potential medical contraindications, including psychiatric contraindications, such as the child's history of sexual abuse or previous use of mechanical restraints.

§748.2705. What mechanical and other restraint devices are prohibited?

(a) Devices with metal wrist or ankle cuffs, such as handcuffs or shackles;

(b) Devices with rubber bands, rope, or cord;

(c) Devices with padlocks, key locks, or fastening devices;

(d) Long ties, such as leashes;

(e) Bed sheets or blankets;

(f) Veil beds; and

(g) Beds that have bedrails for the entire length of the bed, except for a child receiving primary medical needs and authorized by a physician.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601248

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 8. SUCCESSIVE USE AND COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.2751, 748.2753, 748.2755, 748.2757

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2751. May a caregiver successively use emergency behavior interventions on a child?

(a) A caregiver may successively use emergency behavior interventions on a child only if:

- (1) Allowed by your policies;
- (2) Permitted by rules of this subchapter for both types of emergency behavior intervention; and
- (3) The following written orders are met:

(A) If the successive intervention is seclusion immediately following a personal restraint or mechanical restraint: the written order for the seclusion meets the requirements in Division 3 of this subchapter (relating to Orders) and permits and provides clinical justification for the use of the seclusion successive to a personal restraint or a mechanical restraint;

(B) If the successive intervention is a mechanical restraint immediately following a personal restraint or seclusion: the written order for the mechanical restraint meets the requirements in Division 3 of this subchapter and permits and provides clinical justification for the use of the mechanical restraint successive to a personal restraint or a seclusion;

(C) If the successive intervention is a personal restraint immediately following a seclusion or a mechanical restraint: The professional ordering the seclusion or mechanical restraint must approve of and provide clinical justification for the successive use of the personal restraint in a written order; and

(D) If the successive intervention is personal restraint immediately following another personal restraint: the time spent in the personal restraints is cumulative and may not exceed the maximum length of time permitted.

(b) A caregiver must allow the child:

- (1) Bathroom privileges at least once every two hours;
- (2) An opportunity to drink water at least once every two hours;
- (3) Regularly prescribed medications unless otherwise ordered by the licensed physician;
- (4) Regularly scheduled meals and snacks served in a safe and appropriate manner; and

(5) An environment that is adequately ventilated during warm weather, adequately heated during cold weather, appropriately lighted, and free of safety hazards.

§748.2753. May a caregiver simultaneously use emergency medication in combination with another emergency behavior intervention?

(a) A caregiver may simultaneously use emergency medication in combination with personal restraint or seclusion only if:

- (1) Allowed by your policies;
- (2) Permitted by the rules of this subchapter for both types of emergency behavior intervention; and
- (3) Written orders specifically allow the combination.

(b) The written orders must include clinical justification for the combination of emergency medication with personal restraint or seclusion that goes beyond the justification for the use of a single emergency behavior intervention. Clinical justification for the combination must be provided by:

(1) The licensed physician ordering the emergency medication for the combination of emergency medication and seclusion; or

(2) Both the licensed physician ordering the emergency medication and the professional ordering the personal restraint, if they are different people.

§748.2755. May a caregiver simultaneously implement mechanical restraint in combination with emergency medication?

(a) A caregiver may simultaneously implement mechanical restraint in combination with emergency medication only if:

- (1) Allowed by your policies;
- (2) Permitted by the rules of this subchapter for both types of emergency behavior intervention; and
- (3) Written orders specifically allow the combination.

(b) The written orders must include clinical justification for the combination of mechanical restraint with emergency medication that goes beyond the justification for the use of a single emergency behavior intervention. Clinical justification for the combination of mechanical restraint and emergency medication must be coordinated and provided by the licensed psychiatrist ordering the medical restraint and the licensed physician ordering the emergency medication, if they are different people.

§748.2757. May a caregiver simultaneously implement mechanical restraint in combination with seclusion?

No, mechanical restraint and seclusion may not be simultaneously implemented.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601249

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.2801, 748.2803, 748.2805, 748.2807

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2801. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §748.2801

§748.2803. How long may a caregiver seclude or mechanically restrain a child who has been released within the same 12-hour time period?

If a child is released from seclusion or a mechanical restraint and then secluded or mechanically restrained again within the same 12-hour period, the time spent in seclusion or mechanical restraint is cumulative and may not exceed the maximum length of time permitted.

§748.2805. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §748.2805

§748.2807. May continuation orders be obtained verbally to exceed the maximum length of time that seclusion or mechanical restraint can be administered to a child?

(a) Yes, if:

(1) The caregiver does a face-to-face evaluation of the child;

(2) Verbal authorization is obtained before the end of the maximum length of time for seclusion;

(3) The caregiver documents the verbal continuation orders; and

(4) The professional who provides the verbal order provides a written version of the order within 72 hours of issuing the order. The written copy must include the time, date, and the professional's signature.

(b) If the seclusion and mechanical restraint continues beyond the maximum length of time, then the caregiver must allow the child:

(1) Bathroom privileges at least once every two hours;

(2) An opportunity to drink water at least once every two hours;

(3) Regularly prescribed medications, unless otherwise ordered by the licensed physician;

(4) Regularly scheduled meals and snacks served in a safe and appropriate manner; and

(5) An environment that is adequately ventilated during warm weather, adequately heated during cold weather, appropriately lighted, and free of safety hazards.

(c) If the mechanical restraint continues beyond the maximum length of time, then the caregiver must also allow the child an opportunity for range-of-motion exercises for at least five minutes of each hour a child is in restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601250

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 10. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§748.2851, 748.2853, 748.2855

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2851. What follow-up actions must caregivers take after the child's behavior no longer constitutes an emergency situation?

(a) The caregivers must take appropriate actions to help the child return to routine activities. The follow-up actions of the caregivers must include:

(1) Providing the child with an appropriate transition and offering the child an opportunity to return to regular activities;

(2) Observing the child for at least 15 minutes; and

(3) Providing the child with an opportunity to discuss the situation that led to the need for emergency behavior intervention and the caregiver's reaction to that situation. The discussion must be held in private as soon as possible and no later than 48 hours after the child's use of an emergency medication or release from any emergency behavior intervention.

(b) Caregivers involved in the emergency behavior intervention must conduct a post-emergency behavior intervention discussion with the child. The goal of the discussion is to allow the child and caregiver to discuss:

(1) The child's behavior and the circumstances that constituted the need for an emergency behavior intervention;

(2) The strategies attempted before the use of the emergency behavior intervention and the child's reaction to those strategies;

(3) The emergency behavior intervention itself and the child's reaction to the emergency behavior intervention;

(4) How caregivers can assist the child in regaining self-control in the future to avoid the administration of an emergency behavior intervention; and

(5) What the child can do to regain self-control in the future to avoid the administration of an emergency behavior intervention.

(c) Caregivers involved in the emergency behavior intervention must:

(1) Debrief with each other concerning the incident as soon as possible after the situation has stabilized; and

(2) Make every effort to debrief with children in care who witness the incident.

(d) The supervisor(s) of the caregivers involved in the emergency behavior intervention must review and document the use of the emergency behavior intervention within 72 hours of the intervention.

(e) The caregivers do not have to return the child to previous activities or place the child in current activities that the group is participating in if the caregivers deem the child's participation is not in the best interests of the child or the other children in the group. However, caregivers must engage the child in an alternative routine activity.

(f) This rule does not apply to the following types of emergency behavior intervention:

(1) Short personal restraint; and

(2) Seclusion, if the child is receiving emergency care services.

§748.2853. What must the caregiver document after discussing his use of an emergency behavior intervention with a child?

(a) The date and time the caregiver offered the discussion;

(b) The child's reaction to the opportunity for discussion;

(c) The date and time the discussion took place, if applicable; and

(d) The content of the discussion, if applicable.

§748.2855. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) The child's name;

(2) The basis for the emergency behavior intervention;

(3) A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;

(4) The de-escalation attempted before the use of the emergency behavior intervention and the child's reaction to those strategies;

(5) The specific emergency behavior intervention administered;

(6) The date and time the intervention was administered;

(7) The length of time the child was restrained or secluded;

(8) The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;

(9) The name of the person(s) who observed the child;

(10) The duration of the emergency behavior intervention;

(11) All attempts to explain to the child what behaviors were necessary for release from the intervention;

(12) The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention;

(13) The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention; and

(14) Supervisors of caregivers involved in emergency behavior intervention of a child must document their review of the use of the intervention within 72 hours of the incident.

(b) If personal restraint is used, documentation must also include the specific restraint techniques used, including a prone or supine restraint used as a transitional hold.

(c) If emergency medication is used, documentation must also include the specific medication used and the dosage administered to the child.

(d) If mechanical restraint is used, documentation must also include:

(1) The specific restraint device used; and

(2) Continuous observation and regular respiration and circulation checks and times the checks were conducted.

(e) This rule does not apply to short personal restraints.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601251

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 11. TRIGGERED REVIEWS

40 TAC §§748.2901, 748.2903, 748.2905, 748.2907, 748.2909

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2901. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §748.2901

§748.2903. When must a triggered review occur?

(a) A triggered review must occur as soon as possible, but no later than 30 days after the review is triggered.

(b) The regularly scheduled review of the child's service plan can serve as the triggered review if it meets the requirements in §748.2907 of this title (relating to What must the triggered review include and what must be documented in the child's record?) and takes place no later than 30 days after the review is triggered.

§748.2905. Who must participate in the triggered review?

A full service planning team must participate in the triggered review. Even if the child is not receiving treatment services, the two additional professions required in §748.1339(b) of this title (relating to Who must be involved in developing an initial service plan?) must be involved in the triggered review.

§748.2907. What must the triggered review include and what must be documented in the child's record?

(a) The same items that must be included and documented in an initial service plan, (see §748.1337 of this title (relating to What must a child's initial service plan include?));

(b) A review of the records and orders of the emergency behavior interventions;

(c) A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(d) An examination of alternatives to manage the child's behavior and to assist the child in managing his own behavior; and

(e) A written plan for reducing the need for emergency behavior intervention.

§748.2909. What if there are four triggered reviews within a 90-day period?

If there are four triggered reviews within a 90-day period:

(1) A licensed psychiatrist, psychologist, clinical social worker, professional counselor, or marriage and family therapist must examine the child; and

(2) The licensed professional must make service plan recommendations regarding the use of emergency behavior interventions. You must document these recommendations in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.
TRD-200601252

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 12. OVERALL OPERATION EVALUATION

40 TAC §748.2951, §748.2953

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.2951. What is an overall operation evaluation?

(a) The overall operation evaluation is an annual review regarding:

(1) The use and effectiveness of emergency behavior interventions at your operation; and

(2) Your emergency behavior intervention policies and procedures, including the training policy and curriculum.

(b) The objectives of the evaluation are to:

(1) Develop and maintain an environment or milieu that supports positive and constructive behaviors of children in care;

(2) Use any type of emergency behavior intervention safely, appropriately, and effectively; and

(3) Eliminate or reduce physical injuries and any other negative side effects on the child's behavior or emotional development resulting from the emergency behavior interventions.

(c) One focus of the evaluation must be on:

(1) The frequency, patterns, and effectiveness of the types of emergency behavior intervention techniques that are used for all children in your operation;

(2) Strategies to reduce the need for emergency behavior interventions for all children in your operation; and

(3) Specific strategies to reduce the need for use of specific types of emergency behavior intervention techniques for all children in your operation.

(d) The results of each overall operation evaluation must be made available to us for review.

§748.2953. What data must be collected?

(a) Quarterly, you must collect, document, and review aggregate numbers of emergency behavior interventions by type of intervention.

(b) This information must be reported to us quarterly.

(c) You must maintain the data for five years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601253

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES

DIVISION 1. SANITATION AND HEALTH PRACTICES

**40 TAC §§748.3001, 748.3003, 748.3005, 748.3007,
748.3009, 748.3011, 748.3013, 748.3015, 748.3017, 748.3019,
748.3021**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3001. When must I have an annual sanitation inspection?

(a) A state or local sanitation official must conduct a sanitation inspection of your operation:

(1) Before we issue you an initial permit; and

(2) At least once every 12 months from the date of the last sanitation inspection.

(b) Each inspection must meet regulations set by the Department of State Health Services or local health department ordinances.

§748.3003. How must I document that a sanitation inspection has been completed?

You must keep the most recent sanitation inspection report, letter, or checklist at your operation to verify the inspection date and findings. The report must include the name and telephone number of the inspector.

§748.3005. Must I make all corrections specified in the sanitation inspection report?

You must correct deficiencies and comply with corrections, restrictions, or conditions that the inspector specifies in the sanitation report, letter, or checklist.

§748.3007. What must I sanitize?

You must sanitize any item or surface that comes into contact with bodily fluids and has the possibility for cross contamination.

§748.3009. How should items be sanitized?

Items may be sanitized by:

(1) Completing the four-step process outlined in the definition in §748.43(38) of this title (relating to What do certain words and terms mean in this chapter?);

(2) Washing the items for five or more minutes in a dishwasher or washing machine that uses hot water of a temperature of at least 160 degrees Fahrenheit;

(3) Washing in a three-compartment sink or three containers. The sinks and/or containers must be large enough to completely immerse the items for soaking, rinsing, and disinfecting; or

(4) Following the requirements of any alternative methods that have been approved by the Department of State Health Services for your operation.

§748.3011. When must employees and children wash their hands?

(a) Employees must practice appropriate hand washing with soap and running water to prevent cross contamination.

(b) Caregivers must instruct children on appropriate hand washing to prevent cross contamination.

§748.3013. What are the parameters for sinks used for food service or food preparation?

All sinks that you use for food service or food preparation must be supplied with hot and cold running water under pressure.

§748.3015. How must caregivers handle bodily fluids that require universal precautions?

(a) Bodily fluids that require universal precautions include blood, vomit, or other bodily fluids that may contain blood.

(b) When handling these bodily fluids, caregivers must:

(1) Use disposable, nonporous gloves;

(2) Discard the gloves in a sanitary manner immediately after one use;

(3) Wash hands with soap and running water after using and disposing of the gloves;

(4) Dispose these bodily fluids in accordance with local regulations. Where local disposal regulations do not exist, the Department of State Health Services must be consulted regarding the appropriate disposal procedures and their recommendations must be followed; and

(5) Dispose disposable syringes, needles, and other sharp items used by persons for injections or for medical or other procedures in a hard plastic, leak and puncture-resistant container immediately after use, and keep them inaccessible to children.

§748.3017. Are animals allowed at my operation?

(a) Yes; if:

(1) You keep the operation and premises free of stray animals. If you choose to have animals on the premises, you must ensure the animals do not create health problems or a health risk for children, such as allergic reactions or the spread of disease through direct or indirect means.

(2) You do not allow children to play with stray animals or other animals that could be dangerous.

(3) You have documentation at your operation showing dogs, cats, and ferrets have been vaccinated as required by Texas Health and Safety Code, Chapter 826.

(4) All animals on the premises, including pets and live-stock, are treated according to a licensed veterinarian's recommendations to protect the health and safety of children.

(b) For therapeutic camp services, you must house horses and other animals that you maintain at a camp at a reasonable distance from any sleeping, living, eating, or food preparation area.

§748.3019. Must I use a licensed exterminator to treat my operation for insects, rodents, and other pests?

(a) You may treat your operation for pests only if the Structural Pest Control Board has certified you as a noncommercial applicator.

(b) Otherwise, you must use a pest control operator licensed by the Texas Structural Pest Control Board to prevent, control, or eliminate pest infestations at your operation. Refer to the Structural Pest Control Act and related regulation for further information on pest control before treating your operation.

(c) For therapeutic camp services, you must maintain a vector control program to ensure effective control of all insects and rodents in the buildings and on the premises of your permanent camp. If chemical control is needed, then you must comply with subsections (a) and (b) of this section.

§748.3021. How must I protect children from dangerous tools and equipment?

Dangerous tools and equipment, such as hatchets, saws, axes, and hammers must be stored, so they are inaccessible to children. Children may use these tools and equipment with direct caregiver-supervision, if appropriate based on the child's age, maturity, and treatment issues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601254

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. NATURAL GAS AND LIQUEFIED PETROLEUM

40 TAC §§748.3061, 748.3063, 748.3065

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3061. When must my operation be inspected for gas leaks?

Your operation must be inspected for gas leaks:

- (1) Before we issue your initial permit; and

(2) At least once every 12 months from the date of the last inspection for gas leaks.

§748.3063. Who must conduct a gas leak inspection at my operation?

(a) If your operation uses natural gas, a licensed plumber or a gas company official must conduct the gas leak inspection.

(b) If your operation uses liquefied propane (LP) gas, you must have your LP-gas system inspected for proper installation and leaks by:

(1) A licensed LP-gas servicing company; or

(2) A licensed plumber who is also licensed with the LP-gas section of the Texas Railroad Commission.

§748.3065. What documentation must I maintain regarding gas leak inspections?

(a) A written gas inspection report must show your gas system is free of leaks and must indicate the date of the inspection, as well as the name and telephone number of the inspector.

(b) You must keep the most recent inspection report at your operation to verify the inspection date and findings.

(c) You must comply with all corrections, conditions, or restrictions specified in the gas inspection report within the timeframes specified by the inspector.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601255

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. FIRE SAFETY PRACTICES

40 TAC §§748.3101, 748.3103, 748.3105, 748.3107, 748.3109, 748.3111, 748.3113, 748.3115, 748.3117, 748.3119

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3101. When must I have a fire inspection?

You must have a fire inspection:

(1) Before we issue your initial permit; and

(2) At least once every 12 months from the date of the last fire inspection.

§748.3103. Who must conduct a fire inspection?

(a) A state or local fire marshal must conduct the inspection.

(b) If an inspection is not available, you must provide documentation of this from a state or local fire marshal or county judge.

§748.3105. What documentation must I maintain regarding a fire inspection?

(a) You must keep the most recent fire-inspection report, letter, or checklist at the operation to verify the inspection date and findings. The report must include the inspector's name and telephone number.

(b) You must comply with the local code and all corrections, restrictions, or conditions specified by the inspector in the fire inspection report, letter, or checklist.

§748.3107. What type of smoke-detection system must I have?

(a) Your operation must have an operable smoke-detection system that is audible throughout the operation. This may be:

(1) An electronic alarm and smoke-detection system; or

(2) Individual electric or battery-operated smoke detectors located according to the fire marshal's recommendations. If no fire marshal is available or able to give recommendations, smoke detectors must be located in the following areas:

(A) In each bedroom, including each room used for sleeping such as when a child requires greater caregiver supervision and is temporarily sleeping in a room other than a bedroom;

(B) At the top of the stairs of each level of an operation with multiple levels;

(C) Corridors of all floors, including in the hallway near every separate sleeping area in the operation; and

(D) Common rooms and recreation areas.

(b) All smoke detectors must be equipped so each person with a hearing impairment will be alerted in the event of a fire.

(c) New operations granted a permit by us on or after January 1, 2007, must have smoke detectors that get their power from building wiring from a commercial source. Wiring must be permanent. Smoke detectors must:

(1) Be equipped with a battery back-up; and

(2) Emit a signal when the batteries are low.

§748.3109. How must smoke detectors be installed at my operation?

(a) Smoke detectors must be installed and maintained according to the manufacturer's instructions or in compliance with the state or local fire marshal's instructions.

(b) Batteries must be changed annually or sooner, as required to maintain operable smoke detector units.

§748.3111. How often must the smoke detectors at my operation be tested?

(a) The administrator or designee must test all battery-operated smoke detectors monthly by pressing the test button or switch on the unit. The date of the test and the name of the employee who does the testing must be documented and kept at the operation for review.

(b) The monitoring company or the state or local fire marshal must test an electronic smoke alarm system at least annually. You must keep documentation of the inspection at the operation for review. The documentation must indicate the date of the inspection and the inspector's name and telephone number.

§748.3113. Must my operation have a fire-extinguishing system?

(a) Yes. Your operation must have a fire-extinguishing system, which may be a sprinkler system and/or fire extinguishers.

(b) The state or local fire marshal must approve the sprinkler system and/or fire extinguishers in your operation. If an inspection is not available, you must have at least one fire extinguisher in the operation rated ABC (3A:40-B:C) or ABCD.

§748.3115. How often must I inspect and service the fire extinguisher(s)?

You must inspect the fire extinguisher(s) monthly and ensure:

(1) There will be no interference with access to the extinguisher in an emergency, for example, there are no objects blocking access;

(2) Fire extinguishers are accessible for immediate use by employees, caregivers, and volunteers; and

(3) Fire extinguishers are serviced as required by manufacturer's instructions, or as required by the state or local fire marshal.

§748.3117. How often must the state or local fire marshal inspect fire extinguisher(s)?

(a) The state or local fire marshal must inspect your fire extinguishers annually.

(b) You must keep documentation of the inspection at the operation for review. The documentation must indicate the date of the inspection and the inspector's name.

§748.3119. How often must a fire sprinkler system be inspected?

(a) If your operation has a fire sprinkler system, the system monitoring company or the state or local fire marshal must test the fire sprinkler system at least annually.

(b) You must keep the most recent inspection report at the operation for review. The documentation must indicate the date of the inspection and the inspector's name and telephone number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601256

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. HEATING DEVICES

40 TAC §748.3161

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.3161. What steps must I take to ensure that heating devices do not present hazards to children?

(a) Gas appliances must have metal tubing and connections, be in good repair, and free from leaks.

(b) Space heaters must be enclosed and have the seal of approval of a United States test laboratory or be approved by the state or local fire marshal.

(c) You must safeguard floor and wall furnace grates, steam and hot water pipes, and electric space heaters, so children do not have access to them.

(d) Gas fuel heaters, fireplaces, and wood-burning stoves must be properly vented to the outside.

(e) If you use a fireplace, wood-burning stove, or space heater, you must install a screen or guard with sufficient strength to prevent children from falling into the fire or against the stove or heater.

(f) You must keep fireplaces and wood-burning stoves clean.

(g) You may not use any of the following in your operation:

(1) Stoves, including portable camp stoves, used to heat any part of the operation;

(2) Open flame heaters (heaters where the flame can be easily touched or accessed); or

(3) Liquid fuel heaters.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601257

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. CARBON MONOXIDE SAFETY PRACTICES

40 TAC §§748.3191, 748.3193, 748.3195

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3191. Must I have a carbon monoxide detector-system?

You must have an operable carbon monoxide detector-system if your operation has gas appliances. This may be:

(1) An electronic carbon monoxide detector-system; or

(2) Individual electric or battery-operated carbon monoxide detectors.

§748.3193. How must carbon monoxide detectors be installed?

(a) You must install carbon monoxide detectors that meet Underwriters Laboratories Inc. requirements (UL-Listed).

(1) You must install carbon monoxide detectors according to manufacturer's specifications for proper location and installation; and

(2) Furniture, draperies, or other items must not cover up detectors.

(b) If you use an electronic carbon monoxide detection-system connected to an alarm/smoke detection system, the system must be installed according to the state or local fire marshal's requirements.

§748.3195. How must I maintain carbon monoxide detectors?

You must maintain electric or battery-operated carbon monoxide detectors in compliance with the manufacturer's instructions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601258

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. EMERGENCY EVACUATION AND RELOCATION

40 TAC §§748.3231, 748.3233, 748.3235, 748.3237, 748.3239

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3231. What is an emergency evacuation and relocation plan?

(a) An emergency evacuation and relocation plan is a plan designed to ensure the safety of children during a fire, severe weather conditions, or another type of emergency requiring evacuation or relocation of children in care.

(b) In an emergency, your first responsibility is to move all the children to a designated safe area known to all employees, caregivers, and volunteers. Your plan must also require the person in charge of your operation during the emergency to:

(1) Designate an employee to call the fire department in case of fire or danger of fire, explosion, toxic fumes, or other chemical

release. If the danger requires immediate evacuation of the operation, this person must first evacuate the operation and then make the necessary call from another location;

(2) Designate an employee responsible for securing children's emergency numbers, emergency medical authorizations, and medications during the emergency;

(3) Once the person in charge is at the designated safe area, account for all children who were in attendance at the time of the emergency; and

(4) Ensure that no one uses elevators during a fire.

§748.3233. Must I have an emergency evacuation and relocation diagram?

(a) You must have a written emergency evacuation and relocation diagram specifying directions for egress on file at your operation.

(b) The emergency evacuation and relocation diagram must show the following:

(1) A floor plan of your operation;

(2) The designated location outside of the operation where all caregivers and children meet to ensure everyone has exited the operation safely;

(3) The designated location inside the operation where all caregivers and children take shelter from threatening weather; and

(4) At least two exit routes that:

(A) Are located in distant parts of the building and lead to the outside;

(B) Are not blocked in any way, including with furniture or equipment;

(C) Are not through a kitchen or other hazardous area, unless specifically approved in writing by the state or local fire marshal. The written approval must be signed and dated by the state or local fire marshal and maintained at your operation for our review;

(D) Are not a window, unless children and caregivers are physically able to exit through the window to the ground outside safely and quickly;

(E) Are not doors or windows that are locked and require a key to open from the inside, unless specifically approved in writing by the state or local fire marshal. The written approval must be signed and dated by the state or local fire marshal and maintained at your operation for our review;

(F) Do not lead into a pool area; and

(G) If above the ground level, are served by standard stairs and do not require ladders, folding stairs, or trap doors to gain access to the ground floor.

§748.3235. Where must I post the emergency evacuation and relocation diagram?

You must post the emergency evacuation and relocation diagram in a prominent and visible location in all buildings used by an employee, volunteer, or child.

§748.3237. What other safety provisions must I make?

(a) Closet door latches must allow children to open the door from the inside of the closet.

(b) In case of electrical failure, you must have an operable source of emergency lighting that is approved by the state or local fire marshal, or operable battery-powered lighting.

(c) Children must be able to open emergency exit doors easily from the inside.

§748.3239. How often must I practice my emergency evacuation and relocation plans?

(a) You must practice an unannounced fire drill at least once every six months from the date of the last fire drill. During each drill:

(1) You must set off a fire alarm or smoke detector;

(2) The participants must use alternate exit routes;

(3) The children must be able to safely exit the building to the designated meeting place within three minutes; and

(4) The participants must not use elevators.

(b) You must practice a severe weather drill at least once every six months from the date of the last severe weather drill.

(c) Emergency evacuation and relocation plans must be routinely practiced at different times during hours of operation.

(d) You must document these drills, including the date of the drill, time of the drill, type of drill, and length of time for the evacuation or relocation to take place.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601259

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. FIRST-AID KITS

40 TAC §748.3271, §748.3273

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3271. Must I have a first-aid kit at my operation?

Yes. All separate living areas and buildings must have a complete first-aid kit available. A first-aid kit must also be available for all field trips. Each first-aid kit must be:

(1) Clearly labeled;

(2) Kept in a clean and sanitary condition;

(3) In good condition and not have expired medications or supplies;

(4) Easily accessible to all employees;

and (5) Stored in a designated location known to all employees;

(6) Kept out of the reach of children.

§748.3273. What must each first-aid kit contain?

Each first-aid kit must contain at least the following supplies:

- (1) A current guide to first aid and emergency care;
- (2) Adhesive tape;
- (3) Antiseptic solution or wipes;
- (4) Cotton balls;
- (5) Multi-size adhesive bandages;
- (6) Scissors;
- (7) Sterile gauze pads;
- (8) Thermometer;
- (9) Tweezers; and
- (10) Waterproof, disposable gloves.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601260

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER P. PHYSICAL SITE

DIVISION 1. GROUNDS AND GENERAL REQUIREMENTS

40 TAC §§748.3301, 748.3303, 748.3305, 748.3307, 748.3309, 748.3311, 748.3313, 748.3315, 748.3317

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3301. What general physical site requirements must my operation meet?

(a) Buildings, including exterior and interior surfaces (such as walls, floors, and ceilings), must be structurally sound, clean, and in good repair. Paints used at the operation after January 1, 2007, must be lead-free.

(b) Buildings must comply with applicable building, plumbing, electrical, fire, and similar codes.

(c) Windows and doors must be in good repair and free of broken glass or hazards.

(d) Walkways must be free of ice, snow, and obstruction.

(e) Outdoor areas must be well drained.

(f) The grounds of the operation must be well maintained and free of hazards.

(g) The grounds of the operation must be free of accumulation of garbage and debris. All garbage must be disposed of in a sanitary manner in accordance with the Texas Commission on Environmental Quality (see 30 TAC Chapter 330, Municipal Solid Waste).

(h) The grounds of the operation must be free of surfaces coated or treated with, or containing, toxic materials that are accessible to children younger than three years old or children who may lick or chew the surface. Such substances include arsenic and creosote used to preserve wood exposed to the outdoor weather, like railroad ties and treated wood.

(i) The building and grounds must be free of rodents and insects.

(j) Equipment must be safe for children and must be kept clean and in good repair.

§748.3303. What parts of my operation must be ventilated?

Living quarters, recreation areas, dining areas, bathrooms, bedrooms, and kitchens must be ventilated by at least one operable window or mechanical ventilation system.

§748.3305. What are the requirements for handrails, railings, and stairway and stairwell landings?

(a) Each ramp, stairway, and steps exceeding two steps must have a well-secured handrail. Stairs must have a minimum width of 36 inches.

(b) Each porch or deck that has over an 18-inch drop must have a well-secured railing.

(c) If a door opens directly to a stairway, the door must be a minimum of 34 inches wide. There must be a landing between the door and the stairs. The landing must be wide enough to allow the door to open and a person to safely step on to the landing while closing the door.

§748.3307. What are the requirements for lighting?

(a) All living quarters must be provided with electric services.

(b) The following must be lighted in order to avoid accidents:

(1) Habitable rooms;

(2) Common use rooms, such as dining rooms, living rooms, laundry rooms, and gymnasiums;

(3) Bathrooms;

(4) Hallways;

(5) Interior stairs;

(6) Outside steps and doorways;

(7) Porches;

(8) Ramps; and

(9) Fire escapes.

(c) You may not use propane, kerosene, or other flammable fuel as a light source.

§748.3309. What are the requirements for a communication system?

Your operation must have:

(1) An operable telephone with an outside line that is accessible to employees in emergencies. This telephone must have a listed telephone number and not be coin-operated; and

(2) A communication system to allow employees to contact other employees in the operation for assistance in an emergency or as needed.

§748.3311. What are the requirements for using a riding lawn mower or tractor?

You must never permit a child:

(1) Under 14 years old to operate a riding lawn mower or tractor; or

(2) To ride as a passenger on an operating lawn mower or tractor.

§748.3313. May I use water from a private water system?

You may use water from a private water system if you maintain:

(1) The water supply in a safe and sanitary manner; and

(2) Written records indicating the private water supply meets the requirements of the Texas Commission on Environmental Quality.

§748.3315. What are the requirements for running hot water?

A thermostat must control the temperature of hot water accessible to children, so the water temperature is no higher than 120 degrees Fahrenheit.

§748.3317. May I use a septic system for sewage disposal?

You may use a septic system for sewage disposal if the septic system:

(1) Is sanitary; and

(2) Meets the standards of the Texas Commission on Environmental Quality, including any routine inspections required by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601261

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. INTERIOR SPACE

40 TAC §§748.3351, 748.3353, 748.3355, 748.3357, 748.3359, 748.3361, 748.3363, 748.3365, 748.3367, 748.3369

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3351. What are the requirements for general living space?

You must provide:

(1) Us with a sketch of the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep;

(2) Living space, appropriate furnishings, and bathroom facilities that are safe, clean, and maintained in good repair;

(3) Provisions for personal storage space for each child's clothing and belongings;

(4) At least 40 square feet per child, including adult residents and children of caregivers residing at the operation, of indoor activity space, excluding bedrooms, halls, kitchens, bathrooms, and any other space not regularly available to a child;

(5) Each bedroom with at least one window with outside exposure as a source of natural light, unless you were granted a permit by us prior to January 1, 2007, and your permit is still valid; and

(6) Every bedroom window with curtains, blinds, shades, or other provisions for rest and privacy.

§748.3353. May I use a video camera to supervise a child in the child's bedroom?

(a) Video cameras may be used to supervise infants and toddlers.

(b) Video cameras may not be used to supervise other children, except infants and toddlers, unless the:

(1) Parent, or other person legally authorized to consent, consents to the use of the video camera; and

(2) Child:

(A) Is younger than five years old;

(B) Has primary medical needs; or

(C) Has a service plan that permits the use for purposes of a documented history of sexually offensive behavior. You must document the justification for the video camera in the child's service plan.

§748.3355. May I use an audio monitoring device to supervise a child in the child's bedroom?

(a) Audio monitoring devices may be used to supervise infants and toddlers.

(b) Audio monitoring devices may not be used to supervise other children, except infants and toddlers, unless the:

(1) Parent, or other person legally authorized to consent, consents to the use of the audio monitoring device; and

(2) Child:

(A) Is younger than five years old;

(B) Has primary medical needs; or

(C) Has a service plan that permits the use for purposes of heightened supervision, such as for children who sleepwalk, experience night terrors, or engage in physically aggressive or sexually offensive behavior. You must document the justification for the audio monitoring device in the child's service plan.

§748.3357. What are the requirements for floor space in a bedroom used by a child?

(a) Floor space:

- (1) Is space that a child can use for daily activities;
- (2) Does not include closets or other alcoves; and
- (3) May not be averaged.

(b) You must provide comfortable sleeping arrangements that meet one of the following:

(1) A single occupancy bedroom with at least 80 square feet of floor space; or

(2) A bedroom with at least 60 square feet of space for each occupant and no more than four occupants per bedroom are permitted even if the square footage of the room would accommodate more than four occupants. The four-occupant restriction does not apply to children receiving treatment services for primary medical needs.

(c) If we granted you a permit to provide emergency care services to a child prior to January 1, 2007, then you are exempt from the 60 square feet of bedroom space for each occupant and the maximum bedroom occupancy requirement until:

- (1) You move your operation to a new building;
- (2) You structurally alter the current building by adding a new room; or
- (3) Your permit is no longer valid.

(d) If prior to January 1, 2007, we granted you a permit, then you are exempt from the maximum bedroom occupancy requirement until:

- (1) You move your operation to a new building;
- (2) You structurally alter the current building by adding a new room; or
- (3) Your permit is no longer valid.

§748.3359. What rooms may I not use as bedrooms?

You may not use the following as bedrooms:

(1) Rooms commonly used for other purposes, such as dining rooms, living rooms, hallways, porches or dens, except for a child temporarily requiring close supervision;

(2) Rooms that are passageways to other rooms; or

(3) Basements; however, if prior to January 1, 2007, we granted you a permit, then basements may be used as bedrooms as long as other relevant requirements are met, and until:

(A) You move your operation to a new building;

(B) You structurally alter the current building by adding a new room; or

(C) Your permit is no longer valid.

§748.3361. May a child in care share a bedroom with an adult?

(a) Generally, each child should have his own designated bedroom or share a bedroom with other children.

(b) A child may share a bedroom with an adult caregiver if:

- (1) In the best interest of the child;
- (2) The child is under three years old and sleeps in the bedroom of the caregiver; and

(3) Approval is documented and dated in the child's service plan by the service planning team.

(c) To determine whether a child should share a bedroom with an adult resident, see §748.1937 of this title (relating to May an adult resident share a bedroom with a child resident?).

(d) This rule does not apply to travel and camping situations.

§748.3363. Can children of the opposite sex share a bedroom?

(a) A child six years old or older may not share a bedroom with a person of the opposite sex. Prior to permitting a child under six years old to share a bedroom with a person of the opposite sex, the service planning team must assess:

(1) What is in the best interest of the child;

(2) The history of these persons for possible sexual abuse and/or sexually inappropriate behavior; and

(3) The appropriateness.

(b) The assessment and approval by the service planning team must be documented and dated in the child's record.

§748.3365. What are the requirements for beds and bedding?

(a) You must provide each child with:

(1) An individual bed or bunk bed, for infants and toddlers a crib is allowable. For crib requirements, see §748.1751 of this title (relating to What specific safety requirements must my cribs meet?);

(2) A clean and comfortable mattress;

(3) A mattress cover or protector if the child is not provided with a mattress that is waterproof or washable;

(4) A pillow and bed linens appropriate for the temperature, including a pillowcase, top sheet, and fitted or bottom sheet;

(5) Extra linens as needed for the child's warmth and comfort, such as a blanket or bedspread; and

(6) Clean bed linens that are changed or laundered if used by a different child and as often as needed for cleanliness and sanitation, but not less than once a week.

(b) If laundry service is not provided, laundry facilities supplied with hot and cold water under pressure must be provided for all children in care to use.

§748.3367. What types of beds are not allowed for a child?

The following types of beds are not allowed:

(1) Triple-deck beds;

(2) Veil beds designed to prohibit a child from leaving the bed, not including beds that have mosquito netting to protect the child from mosquitoes or other insects;

(3) Beds that have bedrails that can entrap a child; or

(4) Any cribs, except for infants and toddlers.

§748.3369. What are the requirements for bunk beds?

(a) A bunk bed must only consist of double-deck beds.

(b) A child who is under six years old, non-ambulatory, or subject to seizures or other medical or physical problems who may require greater caregiver supervision and caregiver access must not use a top bunk bed.

(c) A bunk bed must allow enough space in between beds and the ceiling to allow a child to sit up in bed.

(d) A bunk bed must be equipped with a securely attached ladder capable of supporting the child using the bed and an employee.

(e) A bunk bed that is more than 30 inches above the floor must be equipped with securely attached safety bedrails along the lengths of the bed on each side with a means to allow a child to get in and out of bed. Bunk beds securely attached to a wall may use the wall as one of the required guardrails. The top of safety guardrails must be at least five inches above the top of the mattress. The bed rails and the mattress supports under the mattress must not be an entrapment hazard.

(f) Openings in guardrails or between ladder rungs must not have openings that can entrap a child's body or body part that has penetrated the opening. Openings must measure less than 3 1/2 inches or more than nine inches to prevent a child's body or body part from being entrapped.

(g) A bunk bed must be spaced to provide a walk space on at least one side and one end of each bed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601262

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. TOILET AND BATH FACILITIES

40 TAC §§748.3391, 748.3393, 748.3395, 748.3397, 748.3399

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3391. What are the general requirements for bathroom facilities?

(a) All bathrooms must be maintained in good repair and kept clean at all times.

(b) You must provide bathrooms located on the same floor as the child's bedroom. The child must not have to exit the building to access the bathroom.

(c) To provide privacy, you must ensure a child does not have to cross an activity room, dining room, living room, or similar type room to access a bathroom from the child's bedroom. If prior to January 1, 2007, we granted you a permit, you are exempt from this requirement until:

(1) You move your operation to a new location;

(2) You structurally alter the current building by adding a new room; or

(3) Your permit is no longer valid.

(d) Each bathroom or room with a lock must be able to be unlocked from the outside during an emergency.

§748.3393. What are the requirements for a toilet that a child uses?

(a) Your operation must dispose of wastewater into a community sanitary sewage system, or an approved septic system in accordance with the Texas Commission on Environmental Quality, including any routine inspections required by law.

(b) You must provide:

(1) At least one toilet for every eight children. All toilets must provide individual privacy, including doors to individual toilet stalls; and

(2) Separate toilet facilities for males and females.

(c) When toilet facilities for each gender are located in the same building, the toilet facilities must be:

(1) Distinctly marked for each gender; and

(2) Separated by a solid wall from floor to ceiling.

(d) Toilets must be equipped with toilet paper at all times.

(e) Toilet facilities must meet the handicap accessibility standards according to the American with Disabilities Act, if applicable.

(f) Urinals may be substituted for the toilets for the males on a ratio of one urinal or 24 inches of trough-type urinal for one toilet, not to exceed one-third of the required toilets. Urinals must have privacy walls on three sides that must be constructed of nonabsorbent materials.

§748.3395. What are the requirements for hand-washing sinks that a child uses?

(a) You must maintain all hand-washing sinks in good repair and keep them clean at all times.

(b) You must provide:

(1) At least one hand-washing sink for every eight children;

(2) A hand-washing sink that is adjacent to toilet facilities;

(3) Hand-washing sinks with hot and cold running water; and

(4) Hand-washing sinks equipped with soap and a personal towel, single-use disposable towels, or hot air hand dryers.

§748.3397. What are the requirements for bathing facilities?

(a) All bath and shower areas must provide for individual privacy. This includes doors or nonabsorbent shower curtains to individual bathtubs and showers stalls.

(b) You must provide:

(1) At least one bathtub or shower for every eight females and one for every eight males; and

(2) Separate shower and bath facilities for each gender, where applicable.

(c) When common-use shower facilities for each gender are located in the same building, the facilities must be:

(1) Distinctly marked for each gender; and

(2) Separated by a solid wall from the floor to ceiling.

(d) Each shower and bathtub must be equipped with:

(1) Hot and cold running water; and

(2) Sufficient hot water to meet the demands of the children.

(e) Bathroom facilities must meet the handicap accessibility standards according to the American with Disabilities Act, if applicable.

(f) If prior to January 1, 2007, we granted you a permit, then you do not have to comply with these requirements until:

(1) You move your operation to a new location;

(2) You structurally alter the current bathroom facilities; or

(3) Your permit is no longer valid.

§748.3399. May I use a video camera or audio monitoring device to supervise a child while the child is in a bathroom?

No. You may not use a video camera or audio monitoring device to supervise a child while the child is in a bathroom.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601263

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. POISONS

40 TAC §748.3421

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.3421. What are the requirements for protecting children from poisonous or flammable material?

You must ensure that poisonous or flammable materials are:

(1) Stored in their original, labeled containers;

(2) Kept separate from medication, food, food preparation surfaces, and dining surfaces;

(3) Inaccessible to children, unless caregivers have evaluated a child as capable and likely to use such items responsibly; and

(4) Cleaned up immediately when spilled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601264

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. FOOD PREPARATION, STORAGE, AND EQUIPMENT

40 TAC §748.3441, §748.3443

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3441. What general requirements apply to food service and preparation?

(a) All food and drinks must be of safe quality and must be stored, prepared, distributed, and served under sanitary and safe conditions.

(b) You must sanitize food service equipment, dishware, and utensils after each use. All eating and cookware must be properly stored.

(c) You must keep furniture, equipment, food contact surfaces, and other areas where food is prepared, eaten, or stored clean and in good repair.

(d) If your operation lacks adequate facilities for sanitizing dishes and utensils, you must only use disposable, single-use items.

(e) You must discard single-service napkins, bibs, dishware, containers, and utensils after each use.

(f) You must wash re-useable napkins and bibs after each use.

(g) You must wash re-useable tablecloths when soiled.

(h) Persons who handle food and/or eating utensils for the group must:

(1) Maintain personal cleanliness;

(2) Keep hands clean at all times;

(3) Wash his hands with soap and water thoroughly after each visit to the toilet; and

(4) Be free of infections commonly transmitted through the handling of food or drink and free of communicable diseases.

(i) Food packages must be in good condition and protect the integrity of the contents, so food is not exposed to adulteration or potential contaminants. You must discard cans that are dented, leaking, bulging, or rusted.

(j) When you serve an infant or toddler:

(1) If the child is capable of sitting up, you must serve food on plates, napkins, or other sanitary holders, such as a high chair tray; and

(2) You must not serve foods that present a risk of choking.

(k) When you prepare a meal at the operation, the food preparation area must be in a separate space from the eating, play, and bathroom areas.

(l) Fruits and vegetables must be properly washed before use.

(m) Food must be thawed in the refrigerator, in cold water in a leak-proof bag, or in the microwave.

(n) Food must be protected from contamination.

(o) You must keep raw meat, poultry, fish, and their juices away from other food. After cutting raw meat, you must wash your hands, the cutting board, the knife, and the countertops with hot, soapy water. You must sanitize cutting boards by using a solution of one-teaspoon chlorine bleach in one quart of water.

(p) You must maintain hot food at 140 degrees Fahrenheit or above.

(q) You must refrigerate perishable food:

(1) Within one hour after use when the temperature is above 90 degrees Fahrenheit; or

(2) Otherwise, within two hours.

(r) Uneaten food from a person's plate must not be served again or used in the preparation of other dishes.

(s) You must not permit animals to be in the area of food storage, food preparation, and dining.

§748.3443. What are the requirements for storing food?

(a) All food items must be:

(1) Covered and stored off the floor;

(2) Stored on clean surfaces;

(3) Protected from contamination;

(4) Stored in a container that is protected from insects and rodents;

(5) Refrigerated immediately after use and after meals, if the food requires refrigeration; and

(6) Covered when stored in the refrigerator.

(b) You must have a thermometer in refrigerators and freezers and store:

(1) Refrigerated food at 40 degrees Fahrenheit or below;

and

(2) Frozen food at 0 degrees Fahrenheit or below.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601265

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. PLAY EQUIPMENT AND SAFETY REQUIREMENTS

40 TAC §§748.3471, 748.3473, 748.3475, 748.3477, 748.3479, 748.3481

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3471. What are the minimum safety requirements for outdoor equipment?

You must ensure that outdoor equipment and supplies used both at and away from the operation are safe for the children as follows:

(1) The outdoor activity space must be arranged, so caregivers can adequately supervise children at all times.

(2) The design, scale, and location of the equipment must be appropriate for the body size and ability of the children using the equipment.

(3) Equipment must not have openings that can entrap a child's body or body part that has penetrated the opening.

(4) Equipment must not have protrusions or openings that can entangle something around a child's neck or a child's clothing.

(5) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning.

(6) All anchoring devices must be placed below the level of the playing surface to prevent tripping or injury resulting from a fall.

(7) Equipment must not have exposed pinch, crush, or shear points on or underneath it.

(8) You must not install climbing equipment or swings over asphalt or concrete, unless the asphalt or concrete is covered with properly installed unitary surfacing materials as specified in this subchapter.

(9) Outdoor platforms more than 20 inches in height for children five years old and younger, and more than 30 inches in height for school-age children, must be equipped with guardrails that surround the elevated surface, except for entrances and exits, and that prevent children from crawling over or through the guardrail.

(10) The height of the highest play surface or platform cannot be more than eight feet.

(11) Stairs and steps on outdoor climbing equipment, regardless of height, must have well-secured handrails on both sides of stairs and steps that the children can reach. Rung ladders do not require handrails.

(12) Bounce houses are permitted if used by no more than one child at a time.

§748.3473. How high must platform guardrails be?

Guardrails and protective barriers must be at least:

(1) 29 inches high for pre-kindergarten or younger children; and

(2) 38 inches high for school-age children.

§748.3475. What special maintenance procedures must I follow for my playground?

(a) Your administrator or designee must inspect the playground daily to ensure no hazards are present. Your administrator or designee must inspect the equipment and surfacing material for:

(1) Normal wear and tear;

(2) Broken or missing parts;

(3) Debris or foreign objects;

(4) Drainage problems; or

(5) Other hazards, such as tripping hazards, like exposed concrete footings, tree stumps, and rocks.

(b) Your administrator or designee must:

(1) Ensure that hazards or defects identified during the inspection are removed or repaired promptly; and

(2) Arrange for protection of the children or prohibit use of the equipment until the hazards or defects can be removed or repaired.

§748.3477. What are the specific safety requirements for swings?

(a) All swing seats must be constructed of durable, lightweight, rubber or plastic material.

(b) Edges of all swing seats must be smooth or rounded and have no protrusions.

(c) Swings must not be attached to a composite play structure (a playscape or structure containing equipment for a variety of activities).

(d) Only children under four years old may use a bucket swing, and only if an adult is present to lift and secure the child into the swing. The distance between the protective surfacing and the bottom of a bucket swing must be at least 24 inches to minimize the likelihood of unsupervised young children climbing into the swing.

(e) Tire swings must:

(1) Not be made from heavy truck tires, or tires with exposed steel-belted radials;

(2) Not be suspended from a composite play structure (a playscape or structure containing equipment for a variety of activities) or with other swings in the same swing bay;

(3) Have drainage holes drilled in the underside of the tire and maintained to facilitate water drainage; and

(4) Have a minimum clearance between the seating surface of a tire swing and the uprights of the supporting structure of 30 inches or more when the tire is in a position closest to the support structure.

§748.3479. May I have indoor equipment such as climbing equipment or platforms?

You may have indoor climbing equipment if you comply with the following safety standards:

(1) Floor surfaces under indoor climbing equipment and platforms over 20 inches in height must have a unitary surface that will effectively cushion the fall of a child. The surface must be installed in the use zone and maintained according to the manufacturer's directions. Carpeting alone, even if it is installed over thick padding, is not an acceptable surface under indoor climbing equipment.

(2) Stairs and steps on indoor climbing equipment, regardless of height, must have well-secured handrails on both sides of stairs and steps that the children can reach. Rung ladders do not require handrails.

(3) Platforms, including stairs and steps, over 20 inches in height must be equipped with protective barriers that prevent young children from crawling over or falling through the barrier, or becoming entrapped.

§748.3481. If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?

If we granted you a permit prior to January 1, 2007, then you have five years from January 1, 2007, to comply with the requirements specified in this division. However, during this five-year period, you must ensure that the outdoor equipment is safe, sturdy, and in good repair.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601266

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. PLAYGROUND USE ZONES

40 TAC §§748.3521, 748.3523, 748.3525, 748.3527, 748.3529, 748.3531, 748.3533, 748.3535

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3521. What does the term "use zone" mean?

(a) The use zone is the surface area under and around a piece of playground equipment and platforms onto which a child falling from or exiting from the equipment would be expected to land.

(b) Other than the equipment itself, the use zone must be free of obstacles that a child could run into or fall on top of and be injured.

§748.3523. How do I measure the use zone for stationary equipment?

(a) The use zone for stationary equipment, excluding slides, must extend a minimum of six feet in all directions from the perimeter of the equipment.

(b) Use zones for stationary equipment must not overlap the use zones of any other equipment.

§748.3525. How do I measure the use zone for slides?

(a) The use zone in front of the access and to the sides of a slide must extend a minimum of six feet from the perimeter of the equipment.

(b) The use zone in front of the exit of a slide must extend a minimum of six feet.

(c) The use zone in front of the slide exit must not overlap the use zone of any other equipment.

§748.3527. How do I measure the use zone for to-fro swings?

(a) The use zone to the front and back of to-fro swings (single-axis swings) must extend twice the height of the suspending bar to the protective surfacing below.

(b) The use zone to the front and back of the to-fro swing must not overlap the use zone of any other equipment.

(c) The use zone around the sides of the to-fro swing structure (frame which supports the swings) must be at least six feet and may overlap the use zone of an adjacent swing structure.

§748.3529. How do I measure the use zone for tire swings?

(a) The use zone for tire swings or other multi-axis swings must extend in all directions for a distance equal to the height of the suspending bar to the top of the sitting surface of the tire, plus six feet.

(b) The use zone on the sides of the tire swing support structure must be at least six feet and may overlap the use zone on the sides of an adjacent swing support structure.

§748.3531. How do I measure the use zone for bucket swings?

(a) The use zone to the front and rear of the bucket swing must extend twice the height from the swing beam to the top of the swing-sitting surface.

(b) The use zone specified in subsection (a) of this section must not overlap any other use zone.

(c) The use zone on the sides of the bucket swing structure must be at least six feet and may overlap the use zone on the sides of an adjacent swing support structure.

§748.3533. How do I measure the use zone for rotating or rocking equipment or for track rides?

(a) The use zone for rotating or rocking equipment on which the child sits must be at least six feet from the perimeter when not in use.

(b) The use zone for rotating or rocking equipment or track rides on which the child stands or rides must be at least seven feet from the perimeter of the equipment when not in use.

(c) The use zone for rocking and rotating equipment must not overlap any other use zone.

§748.3535. If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?

If we granted you a permit prior to January 1, 2007, then you have five years from January 1, 2007, to comply with the requirements specified in this division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601267

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 8. PROTECTIVE SURFACING

40 TAC §§748.3561, 748.3563, 748.3565, 748.3567

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3561. Where must I install protective surfacing?

You must install protective surfacing in use zones identified in Division 7 of this subchapter (relating to Playground Use Zones).

§748.3563. What are the requirements of protective surfacing for use zones?

(a) There must be loose-fill surfacing material or unitary surfacing material in the use zones for all climbing, rocking, rotating, bouncing, or moving equipment, slides, and swings. Loose-fill surfacing materials include loose particles such as sand, pea gravel, shredded wood products, and shredded rubber.

(b) You must not install loose-fill surfacing materials over concrete or asphalt.

(c) If you use loose-fill surfacing materials, you must install nine inches or more of uncompressed loose-fill material in the use zones.

(d) You must ensure nine inches of the loose-fill materials are maintained at all times.

(e) You must mark all equipment support posts to indicate the depth at which the loose-fill surfacing material must be maintained.

(f) If you use unitary materials, they must be installed and maintained according to manufacturer's specifications. Unitary surfacing materials are manufactured materials including rubber tiles, mats, or poured-in-place materials cured to form a unitary shock-absorbing surface.

(g) Unitary materials may be installed over concrete or asphalt only if recommended by the manufacturer.

§748.3565. What documentation must I keep at the operation if I use unitary surfacing materials?

(a) If you use unitary surfacing materials, you must have test data from the manufacturer showing:

(1) The impact rating of the material (the maximum height of equipment that may be installed over the surfacing material); and

(2) Installation and maintenance requirements.

(b) This documentation must be at the operation and available for review by Licensing staff upon request.

§748.3567. If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?

If we granted you a permit prior to January 1, 2007, then you have five years from January 1, 2007, to comply with the requirements specified in this division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601268

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. SWIMMING POOLS, WADING/SPLASHING POOLS, AND HOT TUBS

40 TAC §§748.3601, 748.3603, 748.3605, 748.3607

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3601. What are the requirements for swimming pools that a child uses?

If a swimming pool with more than two feet of water is used in an activity sponsored by you, then the swimming pool, either at or away from your operation, must meet the following criteria:

(1) At least two life-saving devices must be available, such as a reach pole, backboard, buoy, or a safety throw bag with a brightly colored buoyant rope or throw line;

(2) One additional life-saving device must be available for each 2,000 square feet of water surface, so a pool of 2,000 square feet would require three life saving devices;

(3) Drain grates, vacuum outlets, and skimmer covers must be in place, in good repair, and unable to be removed without using tools;

(4) Pool chemicals and pumps must be inaccessible to all children;

(5) Machinery rooms must be locked when any child is present;

(6) All parts of the swimming pool must be clearly visible;

(7) The bottom of the pool must be visible at all times;

(8) Pool covers must be completely removed prior to pool use and must not present an entrapment hazard;

(9) All indoor/outdoor areas within 50 feet of the pool must be free of furniture and equipment that a child could use to scale a fence or barrier or release a lock; and

(10) Swimming area rules and emergency procedures must be posted at the swimming area and explained to the children.

§748.3603. What are the additional requirements for a swimming pool located at my operation?

(a) The swimming pool must be built and maintained according to the standards of the Department of State Health Services and any other applicable state or local regulations.

(b) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool.

(c) If the pool is aboveground, it must meet all pool safety requirements specified in this subchapter and have a barrier that prevents a child's unauthorized access to the pool.

(d) Outdoor swimming pools must be enclosed with a six-foot fence or wall that prevents children's access to the pool. It must be constructed, so the fence or wall does not obscure the pool from view.

(e) Doors, operable windows, or gates of living quarters must not be part of the pool enclosure for outdoor swimming pools.

(f) Fence gates leading to the outdoor pool area must have self-closing and self-latching hardware located at least 60 inches from the ground and must be locked when the pool is not in use. An indoor swimming pool must be secured at all times to prevent children's access to the pool when a lifeguard is not on duty.

(g) Fence gates must open outward away from the pool and must not be propped open.

(h) The space between the ground and the bottom of the fence must not exceed four inches.

(i) When a fence is made of horizontal and vertical slats, the horizontal slats must be located on the swimming pool side of the fence.

(j) Doors from the operation leading to the pool area must have a lock that can only be opened by an adult.

(k) The doors and fence gates leading to or through the pool area must not be designated as fire and emergency evacuation exits.

(l) If you have a pool on the premises of your operation and we granted you a permit before January 1, 2007, then you have five years from January 1, 2007, to comply with the specific requirements of this rule. However, during this five-year period, you must ensure:

(1) Children do not have unsupervised access to the pool; and

(2) There is an adult present who is able to immediately turn off the pump and filtering system when children are swimming.

§748.3605. What are the safety requirements for wading/splashing pools at my operation?

(a) Wading/splashing pools (two feet of water or less) at your operation must be:

(1) Stored out of children's reach, when not in use;

(2) Drained at least daily and sanitized; and

(3) Stored, so they do not hold water.

(b) A portable wading pool must not be placed on concrete or asphalt.

§748.3607. What are the requirements for a hot tub?

A hot tub must be covered with a locking cover when not in use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601269

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER Q. RECREATION ACTIVITIES

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §§748.3701, 748.3703, 748.3705, 748.3707, 748.3709, 748.3711, 748.3713, 748.3715, 748.3717, 748.3719

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3701. What are my responsibilities for providing opportunities for recreational activities and physical fitness?

(a) You must provide daily indoor and outdoor recreational and other activities appropriate to the needs, interests, and abilities of the children, so every child may participate.

(b) You must have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided for children in care. Such opportunities must be based on individual interests, with personal and treatment needs being considered.

(c) Except for a child who has written medical orders to the contrary, your programs for non-ambulatory children must include:

(1) Physical fitness development that prescribes a variety of body positions; and

(2) Changes in environment.

(d) Each child must have individual free time as appropriate to the child's age and abilities.

(e) You must provide the follow types of recreational activities based on each individual child's needs:
Figure: 40 TAC §748.3701(e)

§748.3703. What are the requirements for recreational areas and equipment?

You must provide indoor and outdoor recreational areas and equipment for stimulating children in appropriate recreational activities. The activities must be in sufficient variety and quantity, so every child may participate and have some choice of activities.

§748.3705. What are higher risk recreational activities?

Higher risk recreational activities are activities that present a greater potential of injury to the child and involve special technical skill, equipment, or safety regulations for participation, including using all-terrain vehicles, swimming and water activities, watercraft activities, riding horses, wilderness hiking and camping excursions, trampoline use, and using weapons, firearms, explosive materials, and projectiles.

§748.3707. Does Licensing regulate higher risk recreational activities?

Licensing only regulates activities that are sponsored or conducted by the operation, including higher risk recreational activities.

§748.3709. What are the requirements when children participate in a higher risk recreational activity?

You must meet the following requirements when children participate in a higher risk recreational activity:

(1) There must be a person that is responsible for and supervises the higher risk recreational activity;

(2) When the person supervising the higher risk recreational activity is an employee of the operation, the supervising employee must:

(A) Determine each participant's experience and skill level; and

(B) Take this information into account in supervising and assigning equipment or animals to children;

(3) Continue to meet the child/caregiver ratios and appropriately supervise the children at all times. If the person supervising the higher risk recreational activity is not a caregiver with the operation, then that person cannot be counted in the child/caregiver ratio. For additional requirements for child/caregiver ratios for swimming activities, see Division 2 of this subchapter (relating to Swimming Activities); and

(4) You must provide children with equipment that is appropriate to the activity, properly sized and adjusted where applicable, and in good condition.

§748.3711. Who must supervise a higher risk recreational activity?

(a) The higher risk recreational activity must be supervised by a person:

(1) Knowledgeable about safety precautions for the type of higher risk recreational activity being performed; and

(2) Who has the appropriate experience, training, and/or certification in the activity.

(b) If the person supervising a higher risk recreational activity is an employee of the operation, you must document these qualifications in the employee's personnel record.

§748.3713. What duties are required for a person supervising higher risk recreational activities?

A person supervising higher risk recreational activities must:

(1) Be present at the site of the activity whenever the activity is being carried out;

(2) Facilitate training or experience for other persons working in the activity to prepare them for foreseeable risks that may include:

(A) Sunstroke, sunburn, dehydration, hypothermia, frostbite, and snow blindness, as appropriate to the type of activity and weather conditions; and

(B) Dangerous plants, animals, situations, or other hazards that may be associated with the higher risk activities or locations;

(3) Assign duties to other persons working in the activity;

(4) Ensure there is a person at the site of the activity that has a current first-aid and CPR certificate when the activity is in progress;

(5) Ensure that all necessary equipment is complete, in good repair, and safe to use;

(6) Ensure there is a first-aid kit located at the site of the activity that contains equipment:

(A) Relevant to the type of injuries that might be sustained in the specific activity; and

(B) Adequate for the number of participants, the terrain, and the length of the activity;

(7) Obtain an up-to-date report on weather and travel conditions from an official source before a trip or activity that is outdoors;

(8) Ensure that environmental hazards are not severe enough to cause danger to participants;

(9) Develop a written plan for action in case of natural disasters relevant to the terrain and activity, including lost participants, injuries, and illnesses;

(10) Consider each participant's age, physical condition, and experience, as well as the season and weather trends;

(11) Ensure that any risk factors involved in a higher risk activity are explained to the child as part of the orientation to the activity. The child must then have the opportunity to decline his participation in that specific activity. In the case of an activity with extreme risks, the parent must be advised and have the opportunity to refuse his child's participation; and

(12) Must instruct children on the safety precautions and proper use of relevant items or animals. This must be done before access to the item or animal is allowed.

§748.3715. Where must the written plan for action be kept?

A copy of the plan for action must:

(1) Be easily accessible;

(2) Accompany the supervisor or caregiver of the activity; and

(3) Be on file at a designated location in your operation.

§748.3717. What instruction must a caregiver have regarding the plan for action?

Prior to departing for a higher risk recreational activity, the person qualified to supervise the activity must instruct the caregivers participating in the activity regarding the implementation of the plan of action.

§748.3719. May children in care use all-terrain vehicles?

(a) A child in care may not ride on or operate a three-wheel all-terrain vehicle.

(b) Only a child 16 years or older may ride on or operate a four-wheel all-terrain vehicle.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601270

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SWIMMING ACTIVITIES

40 TAC §§748.3751, 748.3753, 748.3755, 748.3757, 748.3759, 748.3761, 748.3763, 748.3765, 748.3767

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3751. Must a certified lifeguard be on duty during an activity involving a body of water?

(a) A certified lifeguard must supervise children at all times during an activity involving a body of water two feet deep or more.

(b) You do not need to provide a lifeguard when:

(1) You are using a public pool for which you are not responsible; and

(2) The pool provides a qualified lifeguard.

§748.3753. What must a certified lifeguard's training consist of? A certified lifeguard's training must:

(1) Be provided through a recognized organization;

(2) Be taught by a certified instructor; and

(3) Award a valid lifeguard certificate or its equivalent documenting successful completion of the training. The certificate does not have to use the term "lifeguard," but you must be able to document that the certificate represents the type of training required in supervision, rescue techniques, life saving, and water safety.

§748.3755. Where must a certified lifeguard be positioned when supervising children who are swimming?

The lifeguard must be located in a position to observe all swimmers and to respond to emergencies.

§748.3757. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §748.3757(a)

(b) In addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, if four or more children are

engaged in swimming activities, then there must be at least two adults to supervise the children.

(c) When a child who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to the lifeguard on duty and the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear an approved life jacket while swimming and additional special precautions are not needed.

§748.3759. May I count the certified lifeguard in the swimming child/adult ratio?

(a) You must not count the certified lifeguard in the swimming child/adult ratio when people other than the children from your operation are swimming.

(b) If only children from your operation are swimming, you may count the certified lifeguard in the swimming child/adult ratio. However, the lifeguard must never be left alone with any of the children unless the lifeguard is also a qualified caregiver for your operation.

§748.3761. Must persons who are counted in the swimming child/adult ratio know how to swim and carry out a water rescue?

In addition to the lifeguard, you must have at least one person counted in the swimming child/adult ratio who is able to swim, carry out a water rescue, and prepared to do so in an emergency.

§748.3763. May I include volunteers or employees who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?

Children in your care must never supervise water activities. To meet the swimming child/adult ratio for water activities, you may include adult volunteers and employees of the operation who do not meet the minimum qualifications for caregivers, providing you:

(1) Maintain enough caregivers to meet the ratios required in Subchapter G of this title (relating to Child/Caregiver Ratios); and

(2) Ensure compliance with all other rules of this chapter, including rules relating to supervision and discipline.

§748.3765. What are the requirements for a child's access to a body of water?

(a) You must use prudent judgment and ensure children in your care are protected from unsupervised access to a body of water such as a swimming pool, hot tub, pond, river, lake, or creek.

(b) Prior to any activity regarding a body of water, you must explain the dangers of the body of water and the rules governing the activity to the children in a manner that each child can understand.

(c) If you allow a child to swim in a body of water:

(1) The supervising adult must clearly designate the swimming areas;

(2) You must meet the swimming child/adult ratios; and

(3) You must have life-saving equipment present at all times that is sufficient to reach and rescue the child, such as a safety throw bag with a brightly colored 50-foot buoyant rope or a rescue boat equipped with a reach pole and a buoy.

§748.3767. May I use a stock tank as a pool for a swimming activity? No. You may not use a stock tank used by livestock for a swimming activity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601271

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. WATERCRAFT ACTIVITIES

40 TAC §§748.3801, 748.3803, 748.3805, 748.3807

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3801. What watercraft activities do the rules of this division apply to?

The rules of this division apply to water activities involving boats, canoes, kayaks, sailboats, rafts, jet skis, and inflatable tubes.

§748.3803. What are the requirements for watercraft activities?

(a) A non-swimmer must:

(1) Wear a life vest; and

(2) With the exception of inflatable tubes, not be in a watercraft without an adult.

(b) At least two adults must be at the shoreline and/or on the water any time children are on the water during watercraft activities.

§748.3805. What considerations must the watercraft activity supervisor take into account prior to the implementation of the activity?

The supervisor of the watercraft activity must:

(1) Assess the skill and swimming ability of each child prior to the activity;

(2) Accompany children on any trip;

(3) Determine if an adult must be in the boat with the child or children; and

(4) Take into account hazards, such as the size of the body of water, the skill and swimming ability of the children, the air temperature, the conditions of the water, and the temperature of the water when determining:

(A) Whether to permit children to participate in a watercraft activity;

(B) The experience and number of adults necessary; and

(C) Whether or not each child must wear a life vest.

§748.3807. What are the requirements for watercraft equipment?

(a) The watercraft and all equipment must be kept in good repair at all times.

(b) You must meet the watercraft requirements of Texas Parks and Wildlife, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601272

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. WILDERNESS HIKING AND CAMPING EXCURSIONS

40 TAC §§748.3841, 748.3843, 748.3845, 748.3847, 748.3849, 748.3851, 748.3853, 748.3855, 748.3857, 748.3859, 748.3861

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3841. What are the requirements for hiking or camping excursions?

When you participate in a hiking or camping activity in an area unfamiliar to the participating adults, and the hiking activity lasts more than two hours:

(1) The person qualified to supervise the hiking or camping excursion must consider the following when selecting the area for hiking or camping:

(A) Evacuation;

(B) Communication; and

(C) Water quality and quantity.

(2) The person qualified to supervise the hiking or camping excursion must have some verifiable experience leading a group in hiking or camping at the elevation, terrain, and climate where the activity is to take place.

(3) Before participation, the caregivers and children must receive instruction on:

(A) The fundamental safety procedures for the area where the hiking or camping will occur;

(B) Procedures to follow if the participant gets lost;

(C) Proper health and sanitation procedures;

(D) Potential high-risk areas where the hiking or camping will occur; and

(E) Fire risks.

(4) The emergency medical care consent forms must be readily accessible to the caregivers accompanying them.

(5) Caregivers participating in the hiking or camping activity must regularly monitor and care for the health and safety of children.

(6) If the excursion will be on private land, you must have an agreement with the person responsible for that land.

§748.3843. What are the requirements for monitoring children's safety and health during hiking or camping excursions?

Caregivers participating in the hiking or camping activity must ensure that:

(1) Each child participating in the hiking or camping activity has the clothing, equipment, and provisions necessary to protect the child from the environment, including insect repellent and sunscreen;

(2) A child does not carry a load of more than 30% of the child's body weight;

(3) Hiking does not exceed the physical capabilities of the weakest member of the group. If a participating child cannot or will not hike, the group must not continue unless other provisions have been made to care for the child;

(4) In temperatures above 80 degrees Fahrenheit:

(A) Children are offered a minimum of three quarts of drinking water per day;

(B) Electrolyte replacement is available to children at all times; and

(C) Other techniques are available to cool a participant, such as water to coat a child's body or cold packs; and

(5) Potable water is available at each campsite. Caregivers must verify water cache location information before the group leaves camp each day, if applicable.

§748.3845. What type of itinerary must I have for hiking, camping excursions, or field trips?

(a) For hiking, camping excursions, or field trips that last for over two hours, you must have a day-to-day itinerary prepared prior to departure, including the:

(1) Date and time of departure;

(2) Destination;

(3) Travel route; and

(4) Anticipated date and time of return.

(b) For hiking, camping excursions, or field trips that last overnight, each point of the itinerary must also identify:

(1) Sources of emergency care, such as hospitals, police, and forest service offices; and

(2) Methods of communicating with sources of emergency care.

(c) The caregivers on the excursion must:

(1) Follow the itinerary as closely as possible; and

(2) Notify the operation of any change, when possible.

§748.3847. Where must the itinerary be kept?

(a) You must keep a copy of the itinerary on file at the operation.

(b) If the excursion is on land governed by the national or state forest service, then you must also provide the service's office with a copy of the itinerary.

§748.3849. What are the requirements for shelter during an overnight excursion?

(a) During an overnight excursion, you must provide each child with:

(1) Adequate shelter, such as a tent, tarp, or cabin; and

(2) Reasonable insulation from cold and dampness by such things as a rain fly, ground cloth, and an insulated pad under bedrolls or sleeping bags.

(b) Open air sleeping is allowable if:

(1) The weather permits;

(2) The child consents; and

(3) You provide a ground cloth and an insulated pad under bedrolls or sleeping bags.

§748.3851. What are the requirements for bed equipment used during an overnight excursion?

You must provide each child with:

(1) An individual bed, bedroll, or sleeping bag;

(2) Extra linens as needed for the child's warmth and comfort, such as a blanket;

(3) Clean bed linens that are changed as often as needed for cleanliness and sanitation, but not less than once a week, if applicable; and

(4) Provisions for proper laundering of bedrolls and sleeping bags between trips or between uses by different individuals.

§748.3853. What are the specific requirements for storing food during a hiking or camping excursion?

(a) You may only use foods capable of being maintained in a wholesome condition with the available equipment.

(b) You must refrigerate perishable food when possible.

(c) If you use an ice chest to refrigerate food during the excursion, you must provide adequate ice at all times.

(d) You must drain ice chests to prevent accumulation of water from melted ice.

(e) You may not store meat and other highly perishable foods for more than 24 hours.

(f) You must discard any contaminated foods.

§748.3855. How must I wash food utensils and equipment when camping?

(a) A common drinking cup, container, or utensil must be washed with uncontaminated hot water and detergent before another person uses it.

(b) You must not use a dish, container, or utensil that is chipped, cracked, broken, damaged, or constructed so as to prevent proper cleaning and sanitizing.

(c) You must discard disposable or single-use dishes, containers, or utensils used in handling food after one use.

(d) You must store eating utensils:

(1) Separately from foods or other materials or substances; and

(2) In clean, dry containers.

§748.3857. What parameters must I follow for drinking water during a hiking or camping excursion?

(a) Drinking water used during a hiking or camping excursion must come from a source known to be safe or must be rendered safe.

(b) An adequate supply of water, under pressure where possible, must be provided at the cooking area for hand washing, dishwashing, food preparation, and drinking.

§748.3859. How must I maintain equipment or chemicals used for disinfecting water?

You must maintain products according to the manufacturer's directions. If applicable, a product must not have expired.

§748.3861. What are the requirements for toilet facilities during overnight camping excursions?

(a) If the campsite is not provided with pit privies or other portable toilets, there must be separate designated areas for each gender for toilet use.

(b) Toilet paper must be available at all times, as needed.

(c) Toilet areas must be located at least:

(1) 20 feet from any stream, lake, well, spring, or other water supply; and

(2) 75 feet from the camp, tent, sleeping, or housing arrangement.

(d) Soap and water for hand washing must be located within 20 feet of the toilet areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601273

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. TRAMPOLINE USE

40 TAC §748.3891, §748.3893

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3891. May I use a trampoline?

(a) You may use a trampoline for individual use if it is less than four feet in diameter and no higher than 12 inches above a properly installed and maintained protective surface as defined in §748.3563 of this title (relating to What are the requirements of protective surfacing for use zones?).

(b) You may use a trampoline as gym equipment as provided in §748.3893 of this title (relating to What are the requirements for using a trampoline as gym equipment?).

§748.3893. What are the requirements for using a trampoline as gym equipment?

You may use a trampoline for supervised training programs, such as gymnastics, diving, and other competitive sports if you meet the following requirements:

- (1) You must prohibit the use of the trampoline when there is no trampoline supervisor present;
- (2) The trampoline supervisor must have formal training and experience in the use of the trampoline and knowledge of trampoline safety and spotting techniques;
- (3) When the trampoline is in use, personal spotters must be present, ready to intervene, and posted on four sides of each trampoline;
- (4) You must prohibit any child younger than six years old from using the trampoline, even in supervised training programs;
- (5) A safety pad must cover all portions of the steel frame and springs;
- (6) The surface around the trampoline must have an impact absorbing surface material;
- (7) Only one child at a time may use a trampoline, regardless of the size of the trampoline;
- (8) Children must not be allowed to jump off the trampoline. If the trampoline is above ground, children must dismount the trampoline by sitting on the edge and sliding off;
- (9) The trampoline must be secured and inaccessible when not in use;
- (10) The condition of the trampoline must be checked for tears, rust, and detachments at least monthly and repaired prior to its next use; and
- (11) The child using a trampoline must be at the center of the mat and must not attempt to do maneuvers beyond the child's capability or training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601274

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



**DIVISION 6. WEAPONS, FIREARMS,
EXPLOSIVE MATERIALS, AND PROJECTILES**

40 TAC §§748.3931, 748.3933, 748.3935, 748.3937

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.3931. Are weapons, firearms, explosive materials, and projectiles permitted at my operation?

Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

- (1) Handguns are not permitted at an operation or during any type of activity;
- (2) A child receiving treatment services or emergency care services is not permitted to use weapons, firearms, explosive materials, or projectiles, or toys that explode or shoot (such as fireworks or BB guns);
- (3) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop policies identifying specific precautions to ensure children do not have unsupervised access to them, including locked storage and separate locked storage for the weapons and ammunition;
- (4) You must determine it is appropriate for a child receiving only child-care services to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and
- (5) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by a caregiver.

§748.3933. What factors must I consider when determining whether weapons, firearms, explosive materials, or projectiles are stored adequately?

When determining if these items are stored adequately, you must consider the age, history, emotional maturity, and background of the children in your care.

§748.3935. May a caregiver transport a child in a vehicle where weapons, firearms, explosive materials, or projectiles are present?

A caregiver may not transport a child in a vehicle where a handgun is present. Otherwise, a caregiver may transport a child in a vehicle where weapons, firearms, explosive materials, or projectiles are present if:

- (1) The child is only receiving child-care services;
- (2) All firearms are not loaded; and
- (3) The weapons, firearms, explosive materials, or projectiles are inaccessible to the child.

§748.3937. What are the requirements for recreational archery?

(a) The archery range must be free from hazards and well marked. There must be a clear path to the target that is not obstructed by such things as rocks, trees, or branches. There must not be any traffic, archery trail, or other activities in the direction of the flight of the arrow.

(b) You must maintain equipment in safe condition. You must inspect bows and arrows for fractures, splinters, or cracks before each use. You must not use damaged bows and arrows.

(c) You may only use bows and arrows in the specified archery area.

(d) Arrows must be issued only at the firing line. Arrows may be nocked to bow string only after:

(1) Shooters are on the firing line; and

(2) The signal to shoot has been given.

(e) Shooters must have a definite target before arrows are released.

(f) All persons must stay behind the firing line until the signal to retrieve arrows is given by a supervising caregiver. All arrows must be retrieved at the same time.

(g) If you have field archery, you must establish and post a procedure that provides for the safety of the archers, including:

(1) Issuance of arrows at the check-in point of the archery trail;

(2) Check in of archer at the beginning of the archery trail; and

(3) Check out when archer has completed the trail.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601275

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER R. TRANSPORTATION DIVISION 1. GENERAL REQUIREMENTS

40 TAC §§748.4001, 748.4003, 748.4005, 748.4007, 748.4009, 748.4011, 748.4013

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.4001. What types of transportation does Licensing regulate?

(a) We regulate any transportation that you provide for trips away from and to your operation.

(b) You must ensure the safety of all children during any transportation that you provide.

§748.4003. What requirements must I meet when transporting a child away from the operation?

Anytime you transport a child away from the operation, you must comply with each of the following requirements:

(1) Each driver must:

(A) Be at least 21 years old. For an exception for children in care, see §748.4005 of this title (relating to May a child in care transport other children in care?);

(B) Be covered by automobile insurance; and

(C) Have a current driver's license allowing the driver to operate the type of vehicle that is used to transport children.

(2) You must not transport more people than the capacity of the vehicle.

(3) The vehicle must travel at a safe speed consistent with the speed limit, terrain, and weather conditions.

(4) For requirements regarding firearms and transportation, see §748.3935 of this title (relating to May a caregiver transport a child in a vehicle where weapons, firearms, explosive materials, or projectiles are present?).

§748.4005. May a child in care transport other children in care?

Yes, a child in care may transport other children in care if the child:

(1) Has a valid drivers license;

(2) Is covered by automobile insurance; and

(3) Is given permission by the service planning team to drive and transport other children in care.

§748.4007. What specific information and equipment must be in a vehicle I use to transport children during overnight trips away from the operation?

The following information and items must be accessible and in each vehicle you use to transport children during overnight trips:

(1) A list of the children being transported, which you must check in order to account for the presence of all participating children;

(2) Emergency medical transport and treatment authorization forms for each child being transported;

(3) A list of medications each child is currently taking, the dosage, and the frequency;

(4) Your operation's name and telephone number, and the administrator's or permit holder's name;

(5) Parent's names and telephone numbers and emergency telephone numbers for each child being transported;

(6) A fire extinguisher approved by the local or state fire marshal, secured in the passenger compartment and accessible to the adult occupants;

(7) A first-aid kit; and

(8) An operable flashlight.

§748.4009. What plan must I have for handling transportation emergencies?

(a) You must ensure the driver and caregivers have clear instructions in handling emergency breakdowns and accidents, including

vehicle evacuation procedures, supervision of the children, and contacting emergency help.

(b) The administrator or designee in charge of the operation must know what action to take in responding to a transportation emergency call.

(c) Emergency transportation must be available at all times. It may be provided by the operation or pre-arranged with community services.

§748.4011. What safety precautions must I take when loading and unloading a child from the vehicle?

You must take the following precautions when loading and unloading a child from any vehicle used for transportation, including a bus with a gross vehicular weight rating (GVWR) of 10,000 pounds or more:

(1) You must account for all children exiting the vehicle before leaving the vehicle unattended.

(2) You must not allow a child under eight years old to cross a street to enter a vehicle or after exiting a vehicle, unless an adult accompanies the child.

(3) You must never leave a child under eight years old unattended in a vehicle.

§748.4013. What is required when my operation takes children on out-of-state overnight trips?

(a) If your operation takes children on out-of-state overnight trips, you must develop:

(1) A written itinerary and safety plan for each trip;

(2) Necessary equipment and provisions to meet participants' needs on the trip; and

(3) A letter of information to be sent to parents at least two weeks before the planned departure date.

(b) You must obtain the written permission from each child's parent for each out-of-state trip or must obtain a general written permission from each child's parent for any out-of-state trip in which the child will participate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601276

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SAFETY RESTRAINTS

40 TAC §§748.4041, 748.4043, 748.4045, 748.4047

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.4041. What safety restraint system must I use when I transport children?

(a) For all vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat system, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions before starting the vehicle, and during all times the vehicle is in motion.

(b) All child passenger safety seat systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions.

(c) A child 12 years old or younger must not ride in the front seat of a vehicle.

(d) The following safety restraint devices for a child must be used when the vehicle is on and when transporting children:

Figure: 40 TAC §748.4041(d)

§748.4043. Do the seat belt requirements prohibit transporting children in the bed of a pick-up truck or other parts of the vehicle on the grounds of the operation or public roads?

Yes. Children must be inside the vehicle when transported. The back of a pick-up truck is not considered inside the vehicle. Children must never be transported in the bed of a pick-up truck, while standing on runners, or while on the hood or trunk of any vehicle.

§748.4045. May I place more than one person in each seat belt or safety seat system?

No. Only one person may use each safety belt or safety seat system.

§748.4047. Must caregivers, adults, and/or the driver wear a seat belt?

Yes, for all vehicles other than a bus with GVWR of 10,000 pounds or more, the driver and all other adult passengers in a vehicle transporting children must be properly restrained by seat belts before starting the vehicle and at all times the vehicle is in motion.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601277

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. VEHICLE AND VEHICLE MAINTENANCE

40 TAC §§748.4081, §748.4083

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.4081. What type of vehicle may I use to transport children?

(a) We do not regulate the type of vehicle you may use to transport children.

(b) You must make special provisions if you transport nonambulatory children. When necessary, this may include locks for wheel chairs and hydraulic lifts.

§748.4083. What vehicle maintenance requirements must I maintain for a vehicle used for transporting children?

(a) You must maintain a vehicle in a safe operating condition at all times.

(b) Each vehicle you use must be registered and have a current inspection sticker for the state in which it is registered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601278

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. TRANSPORTATION RECORDS

40 TAC §748.4111

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.4111. What transportation records must I maintain?

(a) You must maintain on file at your operation the name of each driver who transports children and a copy of a valid driver's license for that person.

(b) You must also maintain the following:

(1) Insurance verification in the vehicle; or

(2) If your transportation services are provided by a private person, a firm under contract, or by another arrangement, you must maintain on file a copy of the person's or firm's insurance coverage.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601279

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER S. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE EMERGENCY CARE SERVICES DIVISION 1. SERVICE MANAGEMENT

40 TAC §§748.4201, 748.4203, 748.4205, 748.4207, 748.4209, 748.4211, 748.4213

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.4201. What must I do when I admit a child who cannot consent to emergency care services?

(a) If you admit a child for emergency care services who does not meet the requirements to consent to emergency care services, you must try to contact the child's parent(s) within 24 hours, if you know their identity and how to contact them.

(b) If you cannot contact the parent(s), you must notify the appropriate public agency (Child Protective Services, Juvenile Probation, or police department) of the child's presence.

(c) Your operation must document in the child's record efforts to contact the child's parent(s) and contacts with public agencies.

§748.4203. What are the additional medical requirements when I admit a child to receive emergency care services?

Each child receiving emergency care services must receive a health screening or EPSDT examination within 72 hours after admission:

(1) A health-care professional must provide the screening examination. The health-care professional does not have to be your employee.

(2) With the exception of EPSDT examinations, the person who does the examination must sign and date the results of the screening examination. You must document the results of the examination in the child's record.

(3) If a child has been in a residential child-care operation and has had a health screening in the last 12 months, the child does not

have to have another health screening unless there is reason to believe the child is ill or has been abused.

(4) If the child is coming from a medical setting, you may accept a statement from a licensed health-care professional in place of the examination.

§748.4205. What is the maximum amount of time a child receiving emergency care services may stay in care without a placement extension?

A child receiving emergency care services may stay in care without a placement extension for a maximum of 15 days.

§748.4207. What is the maximum amount of time a child receiving emergency care services may stay in care with a placement extension?

(a) If there is an appropriate reason for continuing the care, a child:

(1) Younger than five years old may continue the placement for emergency care services for up to a total of 30 days in care; and

(2) Five years old or older may continue the placement for emergency care services for up to a total of 90 days in care.

(b) If a child of any age has a parent under 18 years old admitted in the operation or has a sibling five years old or older admitted in the operation, the child may continue placement for emergency care services for the length of time the parent or sibling is receiving emergency care services if:

(1) Deemed in the best interests of the child by the service planning team; and

(2) Only for a maximum of 90 days.

§748.4209. What are the documentation requirements for a placement extension?

(a) The child's service planning team must document the reason for the extension in the child's record.

(b) If the parent responsible for the child has begun presenting the child's information to different operations, agencies, or foster homes based on what the parent believes the child's needs are and where the child's needs can best be met, you must document in the child's record the following verbal information that you receive from the parent:

(1) The reason(s) why a placement cannot be completed timely; and

(2) The date a placement is expected to be completed.

(c) In other situations, you must document the following information for the placement extension, as appropriate:

(1) The child has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance; or

(2) The child meets the requirements to consent to emergency care and consents to the continuation of services to the child or the child's offspring.

(d) You must document your efforts to contact the parent and obtain the rationale for the continuation of care, including the dates you made those efforts.

§748.4211. When must I document the appropriate reason for continuing emergency care services?

(a) You must document the reason for continuing emergency care services in the child's record by the 16th day that the child is in care.

(b) You must include documentation of additional continuations in the child's record every 30 days thereafter, if applicable.

(c) This documentation must be available for our review.

§748.4213. What are the requirements for a written discharge plan?

(a) If the child receives emergency care services for more than 15 days, you must have a written discharge plan for the child from the person responsible for the child.

(b) You must place the written plan in the child's record on or before the child's 16th day in care at your operation.

(c) You must obtain written documentation from the person responsible for the child that the preliminary plan is reviewed and updated at least weekly.

(d) The preliminary plan and weekly reviews must be available for our review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601280

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADMISSION ASSESSMENT

40 TAC §748.4231

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§748.4231. What information must an admission assessment include for a child needing emergency care services?

(a) An admission assessment must provide an initial evaluation of the appropriate placement of the child and must include:

(1) The child's immediate needs;

(2) The name of the referral source;

(3) The date and time of placement;

(4) The reason for emergency placement;

(5) A description of the child's condition as observed by the intake worker;

(6) The child's understanding of the need for emergency care services; and

(7) The child's feelings about the crisis situation and operation care.

(b) You must also obtain the following information as soon as possible after admission:

(1) The child's identity, date of birth, and any additional information needed to determine the child's ability to consent to emergency care services for the child or the child's offspring. To consent to services, the child must be:

(A) The parent of a child;

(B) Pregnant; or

(C) 16 years old or older; and

(i) Residing separate and apart from the child's parent, regardless of whether the parent consents to the admission and duration; and

(ii) Managing his own financial affairs, regardless of the source of income; or

(2) Name, address, and telephone number of the child's parents, if available. This information is not required if the child meets the requirements to consent to emergency care services;

(3) Medications the child is taking; and

(4) Allergies to medication or food.

(c) If you cannot obtain the required information for an assessment:

(1) You must make diligent efforts to obtain all required information.

(2) If attempting to get information at the time of placement would not be in the child's best interests, you may postpone attempting to acquire the information.

(3) In the child's admission assessment, you must document why a:

(A) Particular piece of information is unavailable; or

(B) Delay in obtaining a piece of information is necessary, including efforts made to obtain the information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601281

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. RESPITE CARE SERVICES

40 TAC §§748.4261, 748.4263, 748.4265, 748.4267, 748.4269

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§748.4261. May I provide respite care services?

(a) Respite care services are not subject to regulation under this subchapter, if the:

(1) Care does not exceed 40 days per year as outlined in §745.117(6) of this title (relating to Which programs of limited duration are exempt from Licensing regulation?); and

(2) Respite care services are completely separate from the emergency care services. You must provide the respite services in a completely separate physical space using different caregivers from the caregivers for the emergency care services.

(b) An operation that only provides emergency care services to children may provide respite care services, if you:

(1) Meet all applicable requirements for all children in care, including children admitted only for respite care. This includes compliance with capacity limits, child/caregiver ratios, and supervision rules; and

(2) Ensure that your respite care services do not present a conflict of care for any child receiving emergency care services.

§748.4263. Whom must I notify when I accept a child for respite care?

You must notify the child's parent before accepting the child for respite care.

§748.4265. What information regarding a child must I receive prior to providing respite care services to that child?

To ensure continuity of care, you must obtain the following information:

(1) Specific needs of a child, including:

(A) All psychiatric or medical treatment currently being provided;

(B) Medication regimen and medication instructions;

(C) Authorization for medical treatment; and

(D) Any expectations of the respite caregiver;

(2) Non-routine events taking place in the life of the child;

(3) Emergency contact information, including the:

(A) Child's physician(s);

(B) Child's parent; and

(C) Telephone number of the agency or operation that placed the child; and

(4) The child's history that may affect the operation's ability to provide care for the child, including:

(A) Background of abuse and/or neglect;

(B) Sexually aggressive and physically abusive behavior;

(C) Fire setting;

- (D) Maiming or killing animals;
- (E) Suicidal ideations and attempts; and
- (F) Run-away behaviors.

§748.4267. What is the maximum amount of time a child receiving respite services may stay in care?

(a) A child may be in respite care for 14 consecutive days or 40 total days annually.

(b) If a child needs respite care for more than 14 consecutive days, this is considered a new placement and will not be respite care.

(c) There must be at least a 10-day period between the completion of one occurrence of respite care and the beginning of the next occurrence.

(d) Respite care must not be used if it could be detrimental to the child.

§748.4269. What may I do when I provide respite care services to a child to whom I have already provided respite care?

When you admit into your respite program a child to whom you have already provided respite care, you may update the existing admission assessment information rather than completing a new assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601282

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER T. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE ASSESSMENT SERVICES

DIVISION 1. REGULATION

40 TAC §748.4301

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042 and §42.0425.

§748.4301. Does Licensing regulate all assessment services?

(a) No. This subchapter only regulates general residential operations and residential treatment centers that also provide assessment services.

(b) Services provided by other individuals, agencies, and organizations are not subject to regulation under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601283

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADMISSION

40 TAC §748.4331

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042 and §42.0425.

§748.4331. What are the requirements for approving a child's admission into my assessment program?

(a) The person responsible for the assessment services program must review and approve in writing the determination that your program will be able to provide or obtain all assessment services the child appears to need at intake.

(b) The review, determination, and approval must be:

(1) In writing, signed, and dated from the person responsible for the assessment services program; and

(2) Completed prior to the admission of the child into your assessment services program.

(c) The determination on the appropriateness of the program to meet the child's assessment needs must be filed in the child's assessment services record if the child is admitted into your assessment services program.

(d) You must document in the child's record whether you are:

(1) Only providing assessment services to the child; or

(2) Also providing other services, such as emergency care services.

(e) You must document the date of the child's admission into your assessment program in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601284

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 3. ASSESSMENT PLAN

40 TAC §§748.4361, 748.4363, 748.4365, 748.4367, 748.4369, 748.4371

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§748.4361. When must I complete the child's individual assessment plan?

(a) You must complete the child's individual assessment plan within 10 days from the date of the child's admission into the program.

(b) You must document the plan in the child's record.

§748.4363. When does admission into the assessment services program begin?

Admission into the assessment services program begins when:

(1) The parent makes the decision to place the child into the assessment services program; and

(2) You decide to accept the child for these services.

§748.4365. What must an individual assessment plan include?

An individual assessment plan must include:

(1) Time frames for providing all assessment services;

(2) Recommendations for the child's care during the assessment process;

(3) Any treatment to be provided during the assessment period; and

(4) Current data from the caregiver's evaluation of the child's behavior and level of functioning.

§748.4367. May the common application serve as the assessment plan?

No. The common application may not serve as the plan for how your assessment services program is going to meet the child's needs.

§748.4369. How must my assessment services program collect information from a child's caregivers?

(a) Your assessment services program must systematically collect information from caregivers throughout the child's participation in the assessment services program. This information includes the caregivers' observations and opinions of the child.

(b) You must document this information in the child's assessment services record. Your documentation must include your consideration of the caregivers' observations and opinions.

§748.4371. When is the assessment plan complete?

(a) The assessment plan is complete when it contains the necessary information and the signed approval of the person responsible for the assessment services program or a designated employee who meets the qualifications of a person responsible for the assessment program.

(b) The parent must review and be provided a copy of the assessment plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601285

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. ASSESSMENT REPORT

40 TAC §§748.4391, 748.4393, 748.4395, 748.4397

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§748.4391. What is an assessment report?

(a) The assessment report that is the result of the assessment services is a narrative report that pulls together data from:

(1) Professional evaluation reports on the child; and

(2) The program's assessment on how the child is managing in the program.

(b) The report includes:

(1) Recommendations made in other professional evaluations; and

(2) Recommendations based on the program's experiences with and assessment of the child.

(c) The common application is not and must not serve as the assessment report.

§748.4393. When must I complete the assessment report?

(a) The admission assessment must be conducted rapidly, consistent with good practice, in order to allow for a permanent placement as soon as possible.

(b) You must complete the assessment report within:

(1) 30 days after you admit the child, if the child is younger than five years old; or

(2) 45 days after you admit the child, if the child is five years old or older.

(c) With the approval of the child's parent, you may extend the time frame for completing the report for an additional 15 days. You must document the need for the extension of time in the child's record.

(d) You must complete the assessment report before a planned discharge of the child from the assessment services program. However, additional assessment services may be conducted subsequent to placement if a quick placement is in the best interest of the child.

(e) You must provide a copy of the assessment report to the child's parent as soon as the report is complete.

§748.4395. What must be included in the written assessment report?

In addition to the requirements set forth in §748.1217 of this title (relating to What information must an admission assessment include?), a written assessment report must include:

(1) Copies and results of the determination of the child's basic health and social and developmental assessment, including:

(A) The child's basic health status, as determined under the supervision of a licensed physician;

(B) The child's basic social and developmental needs, as determined under the supervision of the person responsible for the assessment services program or a designated employee who meets the qualifications for a person responsible for the assessment program;

(C) Recommendations for any further assessment services and testing; and

(D) An assessment of the child's immediate and extended family in terms of an ongoing relationship with the child;

(2) Copies and results of all evaluations and testing;

(3) A summary of the primary caregivers' evaluations of the child's behavior and level of functioning;

(4) An assessment of the results and summary in terms of appropriate short- and long-term planning for the child;

(5) Recommendations for placement; and

(6) A recommended behavior management plan based on the assessment results and the primary caregivers' evaluations of the child's behavior and level of functioning.

§748.4397. Who must review and approve an assessment report?

(a) The following people must review the assessment report:

(1) The person responsible for the assessment program or a designated employee who meets the qualifications of a person responsible for the assessment program;

(2) The child's primary caregiver; and

(3) The child's parent.

(b) The person responsible for the assessment program, or the designated qualified employee, must approve and sign the report.

(c) You must file the original, approved and signed assessment report, including any addendums to the report, in the child's assessment services record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601286

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER U. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE THERAPEUTIC CAMP SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.4401, §748.4403

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§748.4401. What do certain words mean in this subchapter?

These words have the following meanings in this subchapter:

(1) Permanent camp--The permanent structure at which the basic needs for camp operation, such as water supply and septic systems, and permanent toilet and/or cooking facilities, are provided.

(2) Permanent structure--Man-made permanent or semi-permanent structures in which groups of people live, eat, sleep, or assemble, such as dining halls, dormitories, cabins, or other structures which are not constructed to be readily movable.

(3) Primitive camp--A portion of the permanent campsite premises or another site at which the basic needs for camp operation, such as water supply systems, and permanent toilet and/or cooking facilities or other permanent structures, are not provided and in which a child stays no longer than 14 days before returning to the permanent camp.

§748.4403. What children are eligible to participate in a therapeutic camp program?

(a) For a child to be eligible to participate in a therapeutic camp program, the child must:

(1) Be 13 years old or older;

(2) Be in need of treatment services to support an emotional disorder; and

(3) Have difficulty functioning in his home, school, or community.

(b) Individuals that are not eligible to participate in a therapeutic camp program include:

(1) An adult;

(2) A child under 13 years old;

(3) A child who receives basic child-care services, including a child in a transitional living services program;

(4) A child who is pregnant. If a child becomes pregnant while in care, you must arrange for the child's immediate discharge or transfer from your therapeutic camp program;

(5) An adolescent parent with his or her child;

(6) A child with primary medical needs or other medical conditions that cannot be easily provided to the child at the permanent campsite or during primitive camping excursions;

(7) A child diagnosed with a Pervasive Developmental Disorders such as Autistic Disorder, Asperger's Disorder and Rett's Disorder;

(8) A child diagnosed with Mental Retardation;

(9) A child for an emergency admission; and

(10) A child for child day care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601287

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ACTIVITIES REQUIRING SPOTTING OR BELAYING

40 TAC §748.4431

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042 and §42.0425.

§748.4431. What are the requirements for an adventure/challenge program that requires spotting or belaying?

You must ensure that:

(1) An employee with at least six weeks experience in supervising a similar type of activity supervises an adventure/challenge program that requires spotting or belaying;

(2) Prior to assuming duty as a spotter and belayer, a person receives instruction in the proper procedures;

(3) A spotter or belayer is directly supervised until the person demonstrates competency;

(4) There is a method for controlling access to the equipment and the activity area in order to prevent unauthorized or unsupervised use by a child;

(5) Safety checks are performed on all equipment and ropes prior to each use;

(6) Each child has a safety orientation before engaging in the activity; and

(7) Each child wears appropriate personal protective equipment during an activity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601288

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PRIMITIVE CAMPING EXCURSIONS

40 TAC §§748.4461, 748.4463, 748.4465, 748.4467, 748.4469, 748.4471, 748.4473

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§748.4461. What is considered a primitive camping excursion?

A primitive camping excursion lasts no more than 14 days, after which children on the camping excursion must return to the permanent camp.

§748.4463. How long must children remain at the operation's permanent camp between primitive camping excursions?

(a) If your therapeutic camp program only allows children to stay at the camp for less than 90 days, then children must remain at the permanent camp at least two days between primitive camping excursions and activities.

(b) If your therapeutic camp program allows children to stay at the camp for 90 days or more, then children must remain at the permanent camp at least 21 days between primitive camping excursions and activities.

§748.4465. What child/caregiver ratios apply to a primitive camping excursion?

(a) In addition to meeting the child/caregiver ratio requirements in Subchapter G of this chapter (relating to Child/Caregiver Ratios), you must have at least two caregivers during any primitive camping excursion.

(b) In a mixed gender group, there must be a caregiver for each gender at all times.

§748.4467. What are the requirements for toilet facilities for a primitive camping excursion?

(a) You may use pit privies and portable toilets in remote camping areas. You must ensure that the pit privies and portable toilets are:

(1) Maintained in good repair and kept clean at all times;

(2) Constructed and maintained according to manufacturer designs and standards set forth by the Department of State Health Services, General Sanitation Division;

(3) Maintained to prevent access by flies and animals to the contents contained within, to prevent fly breeding, and to prevent contamination of any water supply;

(4) Equipped with toilet paper at all times; and

(5) Serviced for the disposal of human excreta that meet regulations set forth by the Texas Commission on Environmental Quality.

(b) If the camp site is not provided with pit privies or other portable toilets, you must:

(1) Comply with the requirements of §748.3861 of this title (relating to What are the requirements for toilet facilities during overnight camping excursions?); and

(2) Have a readily available supply of clean earth backfill or other disposal methods that meet regulations set forth by the Texas Commission on Environmental Quality for the disposal of human excreta in these areas.

§748.4469. What are the requirements for sanitizing hands at a primitive campsite?

(a) Children and employees must sanitize their hands.

(b) At least one of the following methods for sanitizing hands must be available at the campsite:

(1) Bathrooms equipped with running water must always have soap available for use within 20 feet of the toilet areas;

(2) A hand-washing sink using a portable water supply must have a sanitary catch system approved by your local health department and must always have an alcohol-based hand sanitizer available for use:

(A) You must follow label directions when using alcohol-based hand sanitizers; and

(B) Children must not have access to soiled water; or

(3) Privies and portable toilet facilities not equipped with running water must always have at least a waterless alcohol-based hand sanitizer available for use adjacent to toilet facilities. You must follow label directions when using alcohol-based hand sanitizers.

§748.4471. What personal hygiene provisions must I provide to a child who participates in a wilderness camping excursion?

You must provide:

(1) Personal hygiene supplies that are biodegradable;

(2) Means for a child to bathe or clean his body at least twice weekly; and

(3) Females with body or hand sanitizing wipes or similar products for feminine hygiene purposes.

§748.4473. What are the requirements for laundry provisions on a wilderness camping excursion?

You must provide the children:

(1) Who are on a camping excursion a way to launder clothes at least weekly; or

(2) With clean clothes at least weekly.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601289

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new Chapter 749, Child-Placing Agencies, consisting of Subchapter A, Purpose and Scope, §749.1, §749.3; Subchapter B, Definitions and Services, Division 1, Definitions, §749.41, §749.43; Division 2, Services, §§749.61, 749.63, 749.65, 749.67, 749.69, 749.71; Subchapter C, Organization and Administration, Division 1, Permit Holder Responsibilities, §§749.101, 749.103, 749.105, 749.107; Division 2, Governing Body, §749.131, §749.133; Division 3, General Fiscal Requirements, §§749.161, 749.163, 749.165; Division 4, Fiscal Requirements for Adoption Agencies, §§749.191, 749.193, 749.195, 749.197, 749.199; Division 5, Financial Assistance to Birth Mothers, §§749.231, 749.233, 749.235, 749.237, 749.239, 749.241, 749.243, 749.245; Division 6, Fiscal Accountability/Pass-Through Expenses, §749.271, §749.273; Division 7, Branch Offices, §749.301, §749.303; Division 8, Agency Policies, §§749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359; Division 9, Clients and Appeals, §§749.421, 749.423, 749.425; Subchapter D, Reports and Record Keeping, Division 1, Serious Incident Reports, §§749.501, 749.503, 749.505, 749.507, 749.509, 749.511, 749.513, 749.515; Division 2, General Requirements for All Records, §§749.531, 749.533, 749.535, 749.537; Division 3, Personnel Records, §§749.551, 749.553, 749.555; Division 4, Client Records, §§749.571, 749.573, 749.575, 749.577, 749.579, 749.581, 749.583, 749.585, 749.587; Subchapter E, Agency Staff and Caregivers, Division 1, General Requirements, §§749.601, 749.603, 749.605, 749.607, 749.609, 749.611; Division 2, Child-Placing Agency Administrator, §§749.631, 749.633, 749.635, 749.637; Division 3, Child Placement Staff, §§749.661, 749.663, 749.665, 749.667, 749.669, 749.671, 749.673, 749.675, 749.677, 749.679; Division 4, Treatment Director, §§749.721, 749.723, 749.725, 749.727; Division 5, Treatment Services Provided by Nursing Professionals, §749.741, §749.743; Division 6, Contract Staff, Volunteers, and Student Interns, §§749.761, 749.763, 749.765, 749.767, 749.769, 749.771; Subchapter F, Training and Professional Development; Division 1, Definitions, §749.801; Division 2, Orientation, §749.831, §749.833; Di-

vision 3, Pre-Service Experience and Training, §§749.861, 749.863, 749.865, 749.867, 749.869; Division 4, General Pre-Service Training, §§749.881, 749.883, 749.885; Division 5, Pre-Service Training Regarding Emergency Behavior Intervention, §749.901, §749.903; Division 6, Annual Training, §§749.931, 749.933, 749.935, 749.937, 749.939, 749.941, 749.943, 749.945, 749.947, 749.949; Division 7, First-Aid and CPR Certification, §§749.981, 749.983, 749.985, 749.987, 749.989; Subchapter G, Children's Rights, §§749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1021; Subchapter H, Foster Care Services: Admission and Placement, Division 1, Admissions, §§749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115; Division 2, Admission Assessment, §§749.1131, 749.1133, 749.1135, 749.1137; Division 3, Required Admission Information, §§749.1151, 749.1153, 749.1155; Division 4, Emergency Admission, §§749.1181, 749.1183, 749.1185, 749.1187, 749.1189; Division 5, Foster Care Placement, §§749.1251, 749.1253, 749.1255; Division 6, Subsequent Placement, §749.1281; Subchapter I, Foster Care Services: Service Planning, Discharge, Division 1, Service Plans, §§749.1301, 749.1303, 749.1305, 749.1307, 749.1309, 749.1311, 749.1313, 749.1315, 749.1317, 749.1319, 749.1321, 749.1323; Division 2, Service Plan Review and Updates, §§749.1331, 749.1333, 749.1335, 749.1337, 749.1339; Division 3, Discharge and Transfer Planning, §§749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, 749.1375, 749.1377, 749.1379; Subchapter J, Foster Care Services: Medical and Dental, Division 1, Medical and Dental Care, §§749.1401, 749.1403, 749.1405, 749.1407, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1419, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435; Division 2, Administration of Medication, §§749.1461, 749.1463, 749.1465, 749.1467, 749.1469; Division 3, Self-Administration of Medication, §749.1501, §749.1503; Division 4, Medication Storage and Destruction, §749.1521, §749.1523; Division 5, Medication Records, §§749.1541, 749.1543, 749.1545; Division 6, Medication and Label Errors, §§749.1561, 749.1563, 749.1565; Division 7, Side Effects and Adverse Reactions to Medications, §749.1581, §749.1583; Division 8, Use of Psychotropic Medication, §§749.1601, 749.1603, 749.1605, 749.1607, 749.1609, 749.1611; Division 9, Protective Devices, §§749.1641, 749.1643, 749.1645, 749.1647; Division 10, Supportive Devices, §§749.1671, 749.1673, 749.1675; Subchapter K, Foster Care Services: Daily Care, Problem Management, Division 1, Additional Requirements for Infant Care, §§749.1801, 749.1803, 749.1805, 749.1807, 749.1809, 749.1811, 749.1813, 749.1815, 749.1817, 749.1819; Division 2, Additional Requirements for Toddler Care, §749.1841; Division 3, Additional Requirements for Pregnant Children, §§749.1861, 749.1863, 749.1865; Division 4, Educational Services, §§749.1891, 749.1893, 749.1895; Division 5, Recreational Services, §§749.1921, 749.1923, 749.1925, 749.1927; Division 6, Discipline and Punishment, §§749.1951, 749.1953, 749.1955, 749.1957, 749.1959, 749.1961; Subchapter L, Foster Care Services: Emergency Behavior Intervention, Division 1, Definitions, §749.2001; Division 2, Types of Emergency Behavior Intervention That May Be Administered, §§749.2051, 749.2053, 749.2055, 749.2057, 749.2059, 749.2061, 749.2063; Division 3, Orders, §§749.2101, 749.2103, 749.2105, 749.2107; Division 4, Responsibilities During Administration of Any Type of Emergency Behavior Intervention, §749.2151, §749.2153; Division 5, Additional Responsibilities During Administration of a Personal Restraint, §§749.2201, 749.2203, 749.2205;

Division 6, Combinations of Emergency Behavior Intervention, §749.2231, §749.2233; Division 7, Time Restrictions for Emergency Behavior Intervention, §749.2281, §749.2283; Division 8, General Responsibilities, Including Documentation, After the Administration of Emergency Behavior Intervention, §§749.2301, 749.2303, 749.2305; Division 9, Triggered Reviews, §§749.2331, 749.2333, 749.2335, 749.2337, 749.2339; Division 10, Overall Agency Evaluation, §749.2381, §749.2383; Subchapter M, Foster Homes: Screenings and Verifications, Division 1, General Requirements, §§749.2401, 749.2403, 749.2405; Division 2, Foster Home Screenings, §§749.2441, 749.2443, 749.2445, 749.2447, 749.2449, 749.2451; Division 3, Verification of Foster Homes, §§749.2471, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487, 749.2489, 749.2491, 749.2493; Division 4, Temporary Verification, §§749.2521, 749.2523, 749.2525; Division 5, Capacity and Child/Caregiver Ratio, §§749.2551, 749.2553, 749.2555, 749.2557, 749.2559, 749.2561, 749.2563, 749.2565, 749.2567; Division 6, Supervision, §§749.2591, 749.2593, 749.2595, 749.2597, 749.2599; Division 7, Respite Child-Care Services, §§749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635; Division 8, Agency-Foster Family Relationships, §§749.2651, 749.2653, 749.2655; Subchapter N, Foster Homes: Management and Evaluation, §§749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813, 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825; Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment, Division 1, Health and Safety, §§749.2901, 749.2903, 749.2905, 749.2907, 749.2909, 749.2911, 749.2913, 749.2915, 749.2917; Division 2, Tobacco Use, §749.2931; Division 3, Weapons, Firearms, Explosive Materials, and Projectiles, §§749.2961, 749.2963, 749.2965, 749.2967; Division 4, Space and Equipment, §§749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041; Division 5, Nutrition and Food Preparation, §§749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081; Division 6, Transportation, §§749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111; Division 7, Swimming Pools, Bodies of Water, Safety, §§749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149; Subchapter P, Foster-Adoptive Homes and Legal Risk Placements, Division 1, Verification of Foster-Adoptive Homes, §749.3201, §749.3203; Division 2, Legal Risk Placements, §749.3221; Subchapter Q, Adoption Services: Children, Division 1, Consent, §749.3301; Division 2, Adoption Service Plan, §§749.3321, 749.3323, 749.3325, 749.3327; Division 3, Preparation for Adoption, §§749.3341, 749.3343, 749.3345, 749.3347, 749.3349, 749.3351, 749.3353; Division 4, Placement Requirements, §749.3371, §749.3373; Division 5, Required Information, §§749.3391, 749.3393, 749.3395; Division 6, Post-Placement Supervision, §§749.3421, 749.3423, 749.3425, 749.3427, 749.3429, 749.3431; Division 7, Post-Adoption Services, §§749.3461, 749.3463, 749.3465; Subchapter R, Adoption Services: Birth Parents, Division 1, Birth Parent Preparation, §749.3501, §749.3503; Division 2, Termination of Parental Rights, §749.3521, §749.3523; Division 3, Post Adoption Services, §749.3571, §749.3573; Subchapter S, Adoption Services: Adoptive Parents, Division 1, Adoptive Applicant Preparation, §749.3601; Division 2, Pre-Adoptive Home Screening, §§749.3621, 749.3623, 749.3625, 749.3627, 749.3629, 749.3631, 749.3633; Division 3, Basic Care and Safety Requirements, §749.3661, §749.3663; Division 4,

Pre-Placement Requirements, §749.3691, §749.3693; Division 5, Pre-Adoption Consummation Activities, §§749.3721, 749.3723, 749.3725, 749.3727, 749.3729; Division 6, Counseling Services, §749.3741; Division 7, Subsequent Adoptions, §749.3761; Subchapter T, Additional Requirements for Child-Placing Agencies That Provide Assessment Services, Division 1, Regulation, §749.3801; Division 2, Admission, §749.3831; Division 3, Assessment Plan, §§749.3861, 749.3863, 749.3865, 749.3867, 749.3869, 749.3871; Division 4, Assessment Report, §§749.3891, 749.3893, 749.3895, and 749.3897.

DFPS is required by Chapter 42 of the Human Resources Code to periodically review all minimum standard rules. In addition, part of the Child Care Licensing Division's (Licensing) business plan is to review, analyze, and update Licensing rules to strengthen the protection of children in out-of-home care and improve an operator's understanding of the rules. In this issue of the *Texas Register*, DFPS is proposing to repeal Chapter 720, 24-Hour Care Licensing, and to replace it with three new chapters, one of which is Chapter 749, Child-Placing Agencies.

The existing minimum standards for child-placing agencies in Chapter 720 are outdated. The standards have not been revised since 1985. The current standards are divided according to the type of home where care is provided, e.g. therapeutic foster home, habilitative foster home, etc. The proposed rules will consolidate the minimum standards for all these homes into a cohesive set of rules that are designed to focus on the needs of the children in care. Many of the proposed changes are due to this consolidation.

In order to update the minimum standards, information has been obtained from providers and provider associations, Child Protective Services, and Licensing staff. Updates have also been made based on the review of available research and literature relating to the child development field, best practices in child placement, and health and safety practices recommended by experts such as the Consumer Product Safety Commission, American Academy of Pediatrics, and the Texas Department of State Health Services.

The proposed rules will also facilitate an understanding of the law and Licensing requirements and are written using "plain language" techniques with a question and answer format. Rules that are easy to read and understand will result in higher rates of compliance.

A summary of some of the significant changes found in Chapter 749 follows:

Subchapter A, Purpose and Scope - This subchapter describes the applicability of the chapter, which applies to child-placing agencies and their verified foster homes.

Subchapter B, Definitions and Services - This subchapter defines foster family home and foster group home as the primary residence of the foster parents, which effectively prohibits staffed foster homes. However, there is a grandfather clause for current homes. This subchapter also describes the services that agencies may offer. Generally, agencies may be licensed to provide any type of service regulated by DFPS and must have operational policies and procedures to ensure children are admitted and served appropriately. This subchapter defines the types of services DFPS regulates as child-care services, treatment services, and programmatic services. Treatment services are designed to treat and or support children with emotional disorders, mental retardation, pervasive developmental disorders, or pri-

mary medical needs. Programmatic services include transitional living services and assessment services. Agencies must request and receive approval on the license to provide treatment and programmatic services.

Subchapter C, Organization and Administration - All agency records must be true, accurate, current, and complete. Each agency must have a drug testing policy per Senate Bill 6, 79th Legislature, Regular Session, 2005; an annual professional audit; and a conflict of interest policy. Persons with a conflict of interest (family members, paid consultants, etc.) cannot serve as a member of the agency's governing body. There are also new requirements related to the operation of branch offices and to the handling of pass through expenses (birth mother expenses paid by the agency are passed through to the matched adoptive parents).

Subchapter D, Reports and Record Keeping - This subchapter includes requirements for increased serious incident reporting, including specific time frames for notifying Licensing, a child's parent, and/or law enforcement; content and retention of agency, child, and personnel records, including open, archived, and closed records; and, defines timeliness of documentation in a child, personnel, or foster parent record is within 30 days of the event or occurrence.

Subchapter E, Agency Staff and Caregivers - This subchapter requires a written professional staffing plan; a licensed registered nurse on staff if the agency serves children with primary medical needs; a treatment director for an agency that provides treatment services to a significant portion of the children in care, including minimum qualifications for this position according to the type of service being provided; specific responsibilities of a caregiver when supervising children; and restrictions and requirements for volunteers.

Subchapter F, Training and Professional Development - This subchapter includes content and hourly requirements for employee and caregiver/foster parent orientation, pre-service training, annual training, and CPR and first-aid certification. The pre-service and annual training requirements include training on emergency behavior intervention, psychotropic medications, and for those caring for infants and toddlers, information on recognizing and preventing shaken baby syndrome, preventing sudden infant death syndrome, and early childhood brain development.

Subchapter G, Children's Rights - Specific child rights are listed, including the right to have services provided in a language, or any other means, that is understandable to the child; the right to be free from discrimination; the right to confidential care and treatment; and the right not to receive unnecessary or excessive medication. This subchapter also includes specific requirements regarding the search of a child or a child's property, and for informing a child of his rights.

Subchapter H, Foster Care Services: Admission and Placement - This subchapter allows a child to remain in care until age 22, or indefinitely based on the child's circumstances; lists the admission assessment requirements; lists the medical and dental requirements at admission; allows certain emergency admissions, including emergency placements from law enforcement or Juvenile Probation to authorized agencies; and discusses the requirements for pre-placement visits and subsequent placements in foster homes.

Subchapter I, Foster Care Services: Service Planning, Discharge - This subchapter adds requirements for a preliminary

service plan within 72 hours of admission for each child; adds specific requirements for the content of children's service plans based on age and special needs; requires each initial service plan to be completed within 40 days of admission; requires that a child be informed of his/her planned discharge at least four days in advance unless child-placing staff document clinical justification for not providing advance notice; and increases requirements for discharge planning and documentation.

Subchapter J, Foster Care Services: Medical and Dental - This subchapter explains the medical and dental requirements for a child in care; requirements for communicable diseases; requirements for TB testing; immunization requirements; requires children to have a vision and hearing screening; describes the parameters for administering, storing, and destroying medication; increases documentation requirements regarding children's prescription medications; increases the requirements on providing information to parents regarding the use of psychotropic medications; and explains when protective and supportive devices may be used.

Subchapter K, Foster Care Services: Daily Care, Problem Management - This subchapter includes new requirements regarding infants, including feeding, furnishings/equipment, safety, and supervision; children in care who are pregnant or parenting; the agency's involvement with a child's education, including attending conferences specific to the child and advocating for the child's needs; and children's recreational needs. Other requirements address prohibited types of punishment, such as pinching and biting, putting anything in or on a child's mouth, placing a child in a dark space, and requiring a child to remain silent or inactive for inappropriately long periods of time.

Subchapter L, Emergency Behavior Intervention - This subchapter requires agency staff to review each use of emergency behavior intervention within 72 hours of the incident; prohibits prone personal restraints, except as transitional holds that last no longer than one minute; prohibits any personal restraints that twist or place the child's limb(s) behind the child's back; and increases requirements for regularly scheduled evaluations of emergency behavior interventions, both for individual children and for the agency as a whole.

Subchapter M, Foster Homes: Screenings and Verifications - As of January 1, 2012, a separate license will be required for each service area larger than 40 contiguous counties. An agency will need additional licenses for each area in which it chooses to provide services. Foster parents and caregivers must be 21 years old or older if children placed in the home are 13 years old or older. Married foster parents must have been married at least two years prior to verification as foster parents. All children in the foster home must be counted in the home's capacity, including biological children and children placed for respite care. Child/caregiver ratios are decreased, particularly for young children and children receiving treatment services. Other requirements provide increased specificity regarding supervising children in care, use of babysitters, and respite care, including who may provide respite care, time frame restrictions, and required documentation.

Subchapter N, Foster Homes: Management and Evaluation - This subchapter includes requirements for supervisory contacts with foster parents; correcting deficiencies in individual foster homes; and placing homes on inactive status.

Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment - Foster homes must have

fire and health inspections; adults at a foster home can only use tobacco products outside, and use of tobacco products in a vehicle while transporting children in care is prohibited; there are requirements and limitations for weapons in foster homes; a maximum of four children may share a bedroom, excluding children with primary medical needs; foster parents must offer children in care the same food choices that the rest of the family is eating; and there are requirements for swimming pools and going swimming. With the agency's approval, foster parents are allowed to teach a child to drive.

Subchapter P, Foster-Adoptive Homes and Legal Risk Placements - An applicant can be verified as a foster home and an adoptive home at the same time, and the foster home and adoptive home screening can be combined as long as all requirements for each are met.

Subchapter Q, Adoption Services: Children - This subchapter includes requirements related to preparing a child for adoption, including minimum qualification requirements for child-placing staff carrying out this responsibility, and requirements for pre-placement visits, including ensuring that the length and number of visits is based on the age and developmental needs of the child.

Subchapter R, Adoption Services: Birth Parents - This subchapter requires birth parents who voluntarily relinquish their parental rights to complete a medical history form furnished by DFPS; increases agency staff contacts with birth parents, including after the birth of the child; and requires documentation of all contacts with birth parents, including review and approval by child placement management staff before accepting a relinquishment from a parent.

Subchapter S, Adoption Services: Adoptive Parents - This subchapter lists the requirements related to a pre-adoptive home screening, including at least one visit to the adoptive home when all household members are present.

Subchapter T, Requirements for Child-Placing Agencies That Provide Assessment Services - This subchapter clarifies that DFPS only regulates child-placing agencies that also provide assessment services. Requirements include a determination that must be made regarding admission, and an assessment plan and report must be completed within 30 or 45 days of admission, depending on the age of the child.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. Even though DFPS operates 11 certified child-placing agencies, only foster and adoption development (FAD) staff are considered to be performing regulated child-placing activities. DFPS is currently meeting the proposed revised rules for reports and record keeping, therefore, no additional staff are needed. However, FAD staff will need to meet the required first aid and CPR certifications, but it is anticipated that this cost is insignificant and will be absorbed with existing resources.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the risk of harm to children will be reduced and quality of care will be improved due to updating standards based on current knowledge and practices. In addition, the standards will be easier to understand, which should encourage voluntary compliance and reduce noncompliance caused by misinterpretation of the rules.

For each of the first five years that the proposed rules are in effect, Ms. Brown has determined there may be an impact to large, small, and micro-businesses that must comply with these rules, namely child-placing agencies and their verified foster homes. This impact may result in increased cost of services for agencies and foster homes that do not already meet the proposed minimum standards and these increased costs could be passed on to customers, clients, or funding sources.

To assist with evaluating the potential costs, the fiscal impact is stated in terms of cost per \$100 of revenues. It is important to note that, based on survey information, many agencies already meet many of the standards being proposed. Other standards will require only a one-time investment, and will not necessarily result in higher recurring costs. Some agencies will be grandfathered in for some standards, or will be given additional time to comply. In addition, child-placing agencies have some flexibility in the way they structure their operation so as to minimize the impact on their costs of operation.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using a combination of survey data, cost research conducted by staff, and assumptions regarding child-care practices. The survey process, as well as certain key assumptions and methodologies, are described in detail below, as these underlie the individual impact calculations for each rule, or set of rules, that are projected to have a fiscal impact on at least some agencies.

Minimum Standards Rules Revision Survey of Information (the Survey) and Impact Methodology: The purpose of the fiscal impact survey was to assess how many providers would be potentially impacted by certain rules and the estimated costs if the rules were adopted. The results helped to refine the proposed changes to provide the optimum balance of protection for children without significantly impacting the cost and availability of services.

The survey was conducted electronically in August and September 2005 through an Internet website. Licensed providers were notified by postcard, mailed prior to the beginning of the survey, of the survey dates and Internet website address. Other efforts to make all providers aware of the survey included communications through stakeholder groups and notifications published on agency websites.

A brief follow-up survey was conducted in October 2005 to gather additional information regarding certain rules as a result of comments and other input received since the original survey. Additional data was needed to make an analysis of the fiscal impact of the changes being considered. This survey was also conducted electronically through an Internet website. Providers were notified of this survey via email and also at a public hearing on October 24, 2005, which was held during the period when the survey was open for input. This impact analysis incorporates information from both surveys.

At the same time the fiscal impact survey was released in August, a draft of the rules was placed on the DFPS agency website. The purpose of putting the draft on the website was to help those completing the fiscal impact survey understand the proposed changes, so they could furnish appropriate well-informed cost data.

Licensing staff, working with other DFPS staff from the Operations Division and the Financial Services Office, developed the survey. The questions were a mix of multiple choice and open-ended responses. Open-ended questions were used when re-

questing demographics or information, such as cost estimates and/or specific actions that would be taken as a result of a particular proposed rule. The survey included assumptions about which rules would be absorbed in the regular costs incurred by the operations and which rules would have a potential fiscal impact. Survey questions were not developed for every rule because some rules did not have an identifiable fiscal impact, or the impact was deemed insignificant.

The original survey was available on a DFPS website from August 22, 2005, through September 20, 2005. The supplemental survey was open from October 21, 2005, through October 27, 2005. The response rate for each survey was:

Child-placing Agencies - 37 surveys completed; response rate of 17.7%

Child-placing Agencies, Supplemental Survey - 23 surveys completed; response rate of 11.0%

Providers were limited to one survey response each. The agency name was requested to validate that they were a licensed provider eligible to complete the survey and that no duplicate surveys were received.

For each rule addressed by the survey, an estimate was made of the percent of agencies potentially impacted. The percent potentially impacted was calculated by analyzing the responses to the individual survey questions for various indicators.

Annual revenue was calculated from expenditure data at DFPS as adjusted by certain factors. A completion factor was applied to actual Fiscal Year 2005 DFPS payments to each entity as of August 31, 2005, to annualize the total to a projected 12-month period. This amount was then increased proportionately based on survey reported information of the percentage of DFPS enrollment at each entity in order to project revenues from all other sources related to licensed activities. In instances where there was no DFPS payments or child placements, the entity was asked to furnish their annual budget related to licensed activities. Cost per \$100 of revenue was then determined as follows:

Estimated annual revenue / 100 = total number of \$100 revenue in a year

As cost estimates were developed for each rule, the estimate was stated by \$100 of revenue for each entity potentially impacted. These amounts were then averaged to obtain the overall estimated fiscal impact. If a rule would have only a one-time cost, it was assumed that the cost would be absorbed over the course of a year. If a rule could be implemented over multiple years, it was assumed that the cost would be absorbed over the entire length of the implementation period. Finally, if a cost is recurring, it was calculated for one year at a time.

Current providers will be grandfathered for some rules, as long as their license remains valid. There is no estimated fiscal impact to persons or businesses for those rules because no current provider is required to comply and new providers will be subject to the minimum standards that are in effect at the time the business begins operation.

The following is a summary of the rules analyzed for fiscal impact, including the rule number, a description of the rule that results in the fiscal impact, assumptions and other information specific to the cost calculations, cost type (one-time, recurring, etc.), the estimated cost per \$100 of revenue, and the percentage of facilities potentially impacted.

Fiscal Impact for Proposed §749.341: This section contains portions of the current rule, but also requires agencies to develop policies on emergency behavior intervention, including a requirement to obtain, at admission, each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process. This rule was included since asking each child what helps him calm down when he is upset is a logical and necessary part of planning for the care of the child. Required policy also includes that this information be revisited after each emergency behavior intervention. Cost of compliance includes both first year costs to develop the policies and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost impact is in the first year, which is estimated at an average of \$0.15 per \$100 of revenue. Recurring cost of subsequent years is estimated at an average of \$0.04 per \$100 of revenue. An estimated 47% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.349: This section requires an agency to have specific policies related to foster homes that provide treatment services, including an on-going assessment of the caregiver's ability to meet the needs of the child and plans for emergency back-up. Agencies not already meeting the standard must develop and implement specific policies related to foster homes that provide treatment services. Cost of compliance includes both first year costs to develop the policies and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost impact is in the first year, which is estimated at an average of \$0.43 per \$100 of revenue. Recurring cost of subsequent years is estimated at an average of \$0.19 per \$100 of revenue. An estimated 28% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.353: This section requires an agency to have specific policies related to babysitters and respite care in foster homes. There are no current rules regarding respite care. As more agencies are providing respite foster care, it is necessary to strengthen the regulation of this type of care to ensure the safety of the child. Agencies not already meeting the rule must develop and implement specific policies related to babysitters and respite care in foster homes to include amount and type of training for caregivers, number of children and length of time they can be cared for, and procedures for agency review and approval of the child care arrangements. Cost of compliance includes both first year costs to develop the policies, and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost impact is in the first year, which is estimated at an average of \$0.10 per \$100 of revenue. Recurring cost of subsequent years is estimated at an average of \$0.05 per \$100 of revenue. An estimated 75% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.573: This section requires that master records for children and foster and adoptive homes be maintained at the office where the child placement staff that manages the case is located, which could be a branch office. There are no current rules for organization and maintenance of branch offices, however many child-placing agencies have these offices. Cost estimates were based on several possible actions that could be taken to comply with the rule, including acquisition of additional storage space, duplication of records currently retained at a main office or other location, and costs related to staffing. Based on the survey data, there is a one-time average cost estimate, which is \$0.79 per \$100 of revenue. An estimated 13% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.601: This section requires the agency to have a written professional staffing plan. It is important that agencies identify how staff will be utilized to provide all the required services. This requirement is a current rule for residential child-care operations, and this change will make it consistent for all 24-hour child-care. Survey responses indicated that approximately 90% of the cost would be incurred in the first year as the staffing plans are developed. None of the respondents estimated any savings, or cost reductions that would result from having such a plan. Based on the survey data, the estimated average costs are \$0.09 per \$100 of revenue in the first year, and \$0.01 per \$100 of revenue in subsequent years. An estimated 64% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.665: Child placement staff must have significant documented face-to-face contact with a child monthly. However, staff can miss two visits per year, provided a child does not go longer than 60 days without a visit. This means staff must have face-to-face contact with a child at least 10 times a year. The current rule only requires quarterly contact. This change is consistent with CPS policy and comes closer to meeting the nationally recommended standard for monthly contact. Agencies were surveyed to determine whether they were currently making less than the required number of visits, and if they were, the number of additional child placement staff positions needed to meet the requirement. The cost will be recurring and is estimated by applying a standard salary cost of \$34,823 to the total number of new positions needed. Based on the survey data, the estimated average cost is \$4.29 per \$100 of revenue. An estimated 23% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.667 and §749.669: These sections define the responsibilities, including documentation duties, of child placement management staff for approval of certain critical activities, including admission, intake studies, home studies, placement selections, and supervision of less qualified or experienced staff. Current rule requires these activities be approved, but does not speak to the documentation of the approvals. It is important to note that agencies do have flexibility in how these requirements are met using existing staff. Agencies examined the requirements of the rules and estimated the number of additional child placement management staff needed to meet the requirements of this rule and/or identified other costs that would be incurred. The cost will be recurring. The cost of the child placement management staff positions is estimated by applying a standard salary cost of \$55,055 to the total number of new positions needed. Based on the survey data, the estimated average cost is of \$0.11 per \$100 of revenue. An estimated 22% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.721: This section requires an agency to have a treatment director if it provides treatment services to either 30 or more children, or to more than 50% of the children in care, whichever is less. The treatment director must be a full-time employee. Residential child-care operations have the requirement for a treatment director in current standards. This is a new requirement for child-placing agencies, and one that is necessary because of the number of children receiving treatment services that are being placed in foster homes. The threshold number of children was reached after discussions with Licensing staff and providers. Agencies were surveyed to determine how many met the criteria that would require a full-time treatment director, and if they did, whether they currently employ one and whether it was a full-time position. The cost will be recurring. Cost calculations were based on a standard salary of

\$58,000 for a full-time treatment director. Based on the survey data, the estimated average cost is \$0.26 per \$100 of revenue. An estimated 5% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.741: If an agency provides services to support children with primary medical needs, it must have a registered nurse on staff or on contract to respond to emergencies, questions, or other medical issues. The nurse must also lead the service planning process and be available to support caregivers. This is a new rule for child-placing agencies; current rule only requires that nasogastric tubes be inserted or removed by a nurse. This rule is necessary since many foster homes are serving children with primary medical needs and this ensures that there is appropriate staff available to meet the child's needs. Agencies that do not have a nurse available for these purposes and who do provide care for children with primary medical needs were asked to provide a cost estimate of obtaining the services of a nurse to meet the requirement of the rule. The cost will be recurring. Costs ranged from \$25,000 to \$70,000 per agency. The estimated average cost is \$2.80 per \$100 of revenue. An estimated 14% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.831: This rule stipulates there must be an orientation for caregivers and employees and specifies topics that must be covered in orientation training. Current rules require an orientation for employees on the agency's policies and activities, however this rule is more specific in what that orientation must contain. Agencies were asked to compare the proposed rule to their current orientation training, and estimate the cost of revising their curriculum and providing training that includes all the required elements. Approximately 97% of the total cost estimate is first-year costs of developing and implementing training on new topics, and the rest is recurring costs of continuing the orientation training in subsequent years. The estimated average costs are \$0.93 per \$100 of revenue in the first year, and \$0.03 per \$100 of revenue in subsequent years. An estimated 26% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.863 and §749.869(d): These sections require that a new caregiver with no prior training or experience in the use of emergency behavior intervention must complete a minimum of eight hours of pre-service training on this subject. Caregivers of children receiving treatment services must complete 16 hours. Current rule has no clock hour requirement for this pre-service training. The training must be competency based and require participants to demonstrate skill competency at the end of the training. DFPS has investigated a number of restraint-related injuries or deaths. This rule will ensure at least a minimal level of training has been given to caregivers. The cost will be recurring. Agencies not meeting the requirement provided cost estimates of doing so. Costs are affected by many variables, such as number of caregivers requiring training, amount of training currently provided, and qualifications of current instructors. As would be expected, these variables led to a wide range of cost estimates from \$0 to approximately \$122,000 per agency. Based on the survey data, the estimated average costs are \$0.23 per \$100 of revenue for agencies providing basic child-care services and \$0.45 per \$100 revenue for agencies providing treatment services. An estimated 77% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.885 and §749.869(c): These rules require pre-service training to caregivers who administer psychotropic medication. The training must include identification of psychotropic medications, basic pharmacology, techniques

and methods of administering the medications, and related agency policies and procedures. The training must be provided prior to allowing the foster parent or caregiver to administer the medication. A pharmacist, licensed physician, or registered nurse must conduct the training. The trainer must assess each participant after the training, to ensure that the participant has learned the course content. While this is a new rule, it encompasses the current contractual requirement for agencies caring for CPS children. Agencies were surveyed to determine those that either do not provide the required training, or those that offer the training but do not use an instructor meeting the qualifications. The cost will be recurring. Cost estimates are calculated by applying an hourly training rate of \$71 to the estimated number of hours to be provided. Estimates ranged from \$355 to \$4,260 per agency. Based on the survey data, the estimated average cost is \$0.16 per \$100 of revenue. An estimated 21% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.935: This section requires that a person required to have training may obtain no more than one-third of the required annual training hours from self-instructional materials. This includes web-based training that is not instructor-led. It is anticipated that this rule will encourage agencies to offer more training to caregivers and staff and that caregivers and staff will have access to more in-depth training since training in a group setting promotes better learning than through self-instruction. Agencies will still have options in how the training is provided, and the survey indicates that very few agencies are impacted and at a very minimal cost. Current rule requires 75% of training to consist of course work from an accredited educational institution; workshops, seminars, other direct training provided by qualified agencies, organizations, and individuals; in-service training; or self-instruction programs. In-service training and self-instruction programs must include stated learning objectives, curriculum and learning activities, and an evaluation component. Information was obtained regarding the percentage of required annual training hours that are currently being obtained through self-instructional materials. Hours over the one-third limit must be replaced by instructor-led training. This total number of replacement hours is estimated based on the percentages furnished by the agencies responding to the survey. These hours, the number of employees, and a standard hourly cost of training were used to estimate the fiscal impact. The cost will be recurring. The estimated cost per hour of \$16 was taken from provider cost reports submitted to DFPS. Cost estimates ranged from \$0 to \$5,440 per agency. The estimated average cost is \$0.01 per \$100 of revenue. An estimated 6% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.941: This section is a new rule that requires the annual training for caregivers to be designed to be appropriate for the children they are serving based on the age of the child and the child's needs. Agencies were asked to review their current training objectives and based on their experience providing training, to estimate the fiscal impact of implementing any changes from this rule. The cost will be recurring. Cost estimates ranged from \$2,000 to \$122,000 per agency. The estimated average cost is \$0.93 per \$100 of revenue. An estimated 25% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.945: This section requires that annual training on psychotropic medications, including post-training assessment of the participants, must be conducted by a pharmacist, licensed physician, or registered nurse. While this is a new rule, it encompasses the current contractual requirement on agencies caring for CPS children. As more

children in placement are prescribed psychotropic medications, it is necessary to ensure caregivers and staff know how to administer these medications and their effects. The cost will be recurring. Agencies were asked to provide an estimate of the fiscal impact of this rule based on the training they currently provide or would provide under the requirements. Some indicated they could handle this within current resources while others estimated costs ranging to a high of \$19,000. The estimated average cost is \$0.26 per \$100 of revenue. An estimated 29% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.981: This is a rule change that creates two fiscal impacts. The first impact is a result of the child-placement staff acting as a caregiver, such as taking a child alone on an appointment or doctor visit, because as a caregiver they must have CPR and first-aid training. Agencies not currently providing required CPR and first-aid training were asked to estimate the cost of doing so. The training could be incorporated into annual training hours already provided for, or be in addition to those hours. Many variables could affect the cost of providing this training, including policies regarding staff acting as caregivers and the size of the agency. The cost will be recurring. Cost estimates ranged from \$100 to \$5,000 per agency. The estimated average cost is \$0.17 per \$100 of revenue. An estimated 17% of the agencies are potentially impacted. The second fiscal impact is because this section does not allow caregivers to be the sole caregiver for a group of children unless the caregiver has current certifications for first aid, with rescue breathing and choking, and CPR for infants, children, and adults. A foster parent who is a health professional can use documentation of knowledge and training from their employment in lieu of this training requirement. Current rule requires only that the primary caretaker have CPR and first-aid training. Agencies were asked to provide an estimate of the fiscal impact of this rule based on the policy decisions they anticipate making in order to achieve compliance. Compliance could be achieved in many different ways and the cost would vary accordingly. The cost will be recurring. Cost estimates ranged from \$0 to \$15,000 per agency. The estimated average cost is \$0.35 per \$100 of revenue. An estimated 100% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1003: This rule added to the list of child rights the right to have services provided in a language, or any other means, that is understandable to the child. Current rules do not address this as a right, and this rule incorporates the Federal regulation that is part of Title VI of the Civil Rights Act of 1964. A child placed with foster parents who cannot speak the child's language must be provided an interpreter or other means for the foster parents to communicate in the child's own language, or have at least one person at the home at all times who is able to communicate in the child's own language. The cost will be recurring. Agencies not currently meeting this standard were asked to estimate the cost of providing services in the manner required. Although many agencies were already in compliance with this current federal law, this cost was calculated from estimates ranging between \$0 and \$175,200. The estimated average cost is \$0.95 per \$100 of revenue. An estimated 29% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1005: This rule requires that an agency inform children and/or parents of the child's rights within 24 hours of acceptance of the child. The rights must be written in simple, non-technical terms in the primary language of the person being informed. If the person being informed of the child's rights has a visual or auditory impairment, the explanation must be provided in a manner that is understandable to that

person. Current rules have requirements about what a child's rights should be, but there is no requirement on how these rights should be presented to the child and parent. It is anticipated that this rule will help ensure the child adjusts better to the placement setting if he knows what can be expected. The cost will be recurring. Agencies not currently in compliance with this rule were asked to estimate the cost of providing the required communications. This cost was calculated from estimates ranging between \$1,000 and \$50,000. The estimated average cost is \$0.25 per \$100 of revenue. An estimated 27% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1015: This rule requires an adult of the same gender as the child to witness searches of a child over five years old that involves the removal of clothing. This is a new rule and is designed to ensure children are protected from abuse and adds protections for the caregiver in ensuring the search was done appropriately. The cost will be recurring. Agencies not currently in compliance with this rule were asked to estimate the cost of complying with this requirement. Cost estimates ranged from \$3,000 to \$15,000. The estimated average cost is \$1.14 per \$100 of revenue. An estimated 6% of the agencies are potentially impacted. It should be noted that agencies have the option of whether to allow these searches, so there could be zero-cost.

Fiscal Impact for Proposed §749.1111: This section requires a child-placing agency to provide orientation for a newly admitted child. For younger children, orientation must be geared to the intellectual level of the child. This is a new rule for child placing agencies, but is a rule for other residential child-care operations. Agencies should be required to ensure that a child is aware at admission of the agency's policies and procedures to help with the child's adjustment to the placement. The cost will be recurring. Agencies not currently in compliance with this rule were asked to estimate the cost of complying. Cost estimates ranged from \$0 to \$10,000. The estimated average cost is \$0.25 per \$100 of revenue. An estimated 22% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1301: This section requires the agency to complete a preliminary service plan within 72 hours of the child's admission. This is a current rule for residential treatment centers and is required contractually by CPS for all children in foster care at the specialized level of care. The new rule requires a more detailed plan for children receiving treatment services. All other children would need a preliminary service plan developed within 72 hours that simply addresses their immediate needs--the rule does not specify who must develop this plan. The cost will be recurring. Agencies impacted were asked to furnish information on number of admissions, staff time to prepare plans, and other costs of complying with the requirement for preparing these preliminary service plans within 72 hours of a child's admission. A standard child placement staff salary of \$34,823, or \$17 per hour, was applied to the estimate of additional staff time needed to comply. Cost estimates ranged from \$3,000 to \$15,000. The estimated average cost is \$1.42 per \$100 of revenue. An estimated 39% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1309: This section requires for a child 13 years old or older, the service plan must contain a plan for educating the child on: healthy interpersonal relationships, healthy boundaries, pro-social communication skills, sexually transmitted diseases, and human reproduction. This is a new rule and ensures that children are given necessary infor-

mation about physical and emotional development. The cost will be recurring. Agencies not already including these topics in the service plans were asked to estimate the cost of meeting this standard. Cost estimates ranged from \$0 to \$250,000. The estimated average cost is \$0.53 per \$100 of revenue. An estimated 61% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1333: This section requires if there is a change in placement as a result of a change in the child's needs, the service plan must be reviewed and updated accordingly. If the change in placement is not a result of changes in needs, the service planning team may approve reviewing the plan on the original schedule. The current rule requires each agency to have a policy for service plan reviews that addresses issues of placement disruption and planned subsequent placements in addition to regular reviews. This is also a currently required contractual term for agencies that care for CPS children, so only those agencies that do not care for CPS children would be impacted. The cost will be recurring. Agencies not already in compliance with the rule were asked to provide estimates of how many times a year placements are changed due to a change in the child's needs and how many hours are needed to review the service plan when this occurs. An hourly rate of \$15 was applied to the estimate of additional staff time needed to comply with the rule. The estimated average cost is \$0.37 per \$100 of revenue. An estimated 19% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1335: This section has two potential fiscal impacts. It requires that a review and update of a service plan must include an evaluation of any psychotropic medications prescribed for the child, any change in psychotropic medications since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents. There are no current rules regarding a review of the use of psychotropic medications, although there is a requirement to address the medical needs of the child and review how those needs were met. Agencies that contract with CPS are already required to meet this rule, which is likely the reason there are so few agencies impacted. The cost will be recurring. Agencies not already in compliance with the rule were asked to estimate the cost of including an evaluation of psychotropic medications to the review and update of a child's service plan. An annual cost was estimated by applying this per child cost to an estimated number of children per year. The estimated average cost is \$1.83 per \$100 of revenue. An estimated 9% of the agencies are potentially impacted. This section also requires an evaluation of the use and effectiveness of emergency behavior intervention techniques if used during the child's progress reporting period. The evaluation must focus on the frequency, patterns, and effectiveness of types of emergency behavior interventions; strategies to reduce the need for emergency behavior interventions overall; and specific strategies to reduce the need for use of personal and mechanical restraints, emergency medication, and/or seclusion, where applicable. The cost will be recurring. Agencies not already in compliance were asked the cost of including this in the service plan review. An estimated 9% of the agencies are potentially impacted at a cost of \$2.66 per \$100 of revenue.

Fiscal Impact for Proposed §749.1339: This section requires that the intellectual functioning of a child diagnosed as mentally retarded must be re-evaluated at least annually by a psychologist until the child is 10 years old and every two years thereafter; or a psychologist must determine the frequency for a specific child's intellectual functioning to be re-evaluated. This determination, including justification for the timeframe, must be documented in

the child's record annually by the service planning team. Current rule does not include the option for a psychologist to determine the time frame for a specific child. The rule was added at the request of providers and advocates. The cost will be recurring. Agencies not already in compliance with the rule were asked to estimate the cost of complying with the options in the rule regarding the timeframes for re-evaluations of the intellectual functioning of a child diagnosed as mentally retarded. The estimated average cost is \$0.05 per \$100 of revenue. An estimated 19% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1611: This section requires that if a child takes psychotropic medications, the prescribing physician, or physician monitoring the child's use of the psychotropic medication, must evaluate the appropriateness of continuing the medication on at least a quarterly basis. If a health-care professional does not substantiate the effectiveness of a specific psychotropic medication within 90 days, the health-care professional must provide a written rationale for continuing the medication for an additional period. This additional period must not exceed 90 days if effectiveness is not substantiated. A copy of the written rationale must be documented in the child's record. Current rule requires if mind-altering or behavior-modifying medications are ordered for a child, the appropriateness of continuing the medication must be evaluated by the prescribing physician on at least a quarterly basis. This rule is compatible with the contractual requirements for agencies that contract for the placement of CPS children. The cost will be recurring. Agencies not already in compliance with the rule were asked to provide estimates of the cost of implementing the rule and other information that would enable an analysis to be made. While many agencies were complying with all parts of this rule, others were in partial compliance. The estimated average costs range from \$0.23 to \$0.98 per \$100 of revenue. An estimated 3% to 16% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1645: This section states that bed rails that extend the entire length of the bed are prohibited as a protective device, except for children with primary medical needs if authorized by a physician. This is a new rule designed to ensure bed rails are not used to restrain children, since preventing a child from getting out of bed would be a personal restraint. The cost will be recurring. Agencies not already in compliance with the rule were asked to estimate the cost of implementing a prohibition on bed rails. The exception for children with primary medical needs was a revision to the proposed rule made after the survey was complete. Thus the survey data, which did not consider the impact of that change, indicated an estimated average cost is \$0.17 per \$100 of revenue with an estimated 9% of the agencies potentially impacted. It seems reasonable to conclude that the changes will reduce the estimated cost and the number of agencies impacted, although no data is available to restate the original estimates.

Fiscal Impact for Proposed §749.1807: This rule stipulates specifications and safety requirements for cribs. The rule incorporates the recommendations of the Consumer Product Safety Commission. This should be a one-time cost to agencies that are not in compliance. Agencies were asked to furnish information on the number of cribs in use and what percentage of those cribs meets all the specifications in the rule. By applying an estimated cost per crib to the number of cribs that would need to be replaced, the estimated fiscal impact can be calculated. The survey data indicates that there are estimated to be 951 cribs in use, and 107 of these do not meet the specifications of the rule. There is an estimated cost of \$235 per crib. The estimated

average cost is \$0.06 per \$100 of revenue. An estimated 22% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1809: This section allows the use of mesh-cribs or port-a-cribs that meet stated specifications and safety requirements. The rule incorporates the recommendations of the Consumer Product Safety Commission. This should be a one-time cost to agencies that are not in compliance. Agencies were asked to furnish information on the number of cribs in use and how many of those do not meet all the specifications in the rule. By applying an estimated cost per crib of \$235 to the number of cribs that would need to be replaced, the estimated average cost is \$0.08 per \$100 of revenue. An estimated 6% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1861: This section states an agency must offer nutritional counseling and guidance to a pregnant child and this counseling must be documented in the child's record. This is a new rule that is necessary since teen mothers are often not aware of their own nutritional needs or the nutritional needs of their unborn child. This rule ensures some attempt is made to provide for the health and safety of the mother and child. Agencies have a variety of options in how to ensure this counseling is offered. The cost will be recurring. Agencies were asked to determine if someone on their staff was qualified to provide the appropriate nutritional counseling. In addition, they were asked to choose from a list of other possible actions they could take to ensure the counseling was provided and to provide a cost estimate for their selection. The most significant component of the cost estimate is the cost of transportation, which represents approximately 94% of the total cost estimate. The estimated average cost is \$4.71 per \$100 of revenue. An estimated 6% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.1959: This section requires if a foster or adoptive parent, in order to manage a child's behavior, restricts the child's activities for more than seven days or restricts a child to a room or building for more than 24 hours, they must review the restrictions with the child placement management staff, treatment director, professional service providers, or service planning team and document this review in the child's record. Current rule requires documentation any time that the child is restricted to the home for more than 24 hours, but does not require the approvals of the appropriate staff or planning team. This change ensures the appropriate agency staff are aware of the restrictions and ensures that activity restrictions do not become punitive or abusive and do not interfere with needed treatment activities. The cost will be recurring. Agencies were asked to identify the people involved in conducting and documenting a review of restrictions on a child and to estimate the number of hours each would spend on this activity. Fiscal impact was calculated by applying estimated salary costs to those hours. The estimated average cost is \$0.56 per \$100 of revenue. An estimated 24% of the agencies are potentially impacted. Agencies do have the option of whether to allow this type of discipline at all which would be a zero cost.

Fiscal Impact for Proposed §749.2301 and §749.2303: These sections require that caregivers involved in the emergency behavior intervention of a child must debrief with child placement staff concerning the incident immediately or as soon as possible after the situation has stabilized, revisit the child's input on preferred de-escalation techniques, and document the debriefing in the child's record. Caregivers involved in the emergency behavior intervention of a child must make every effort to debrief with

the children in care who witness the incident. At each review of a child's service plan, you must evaluate the use, frequency, patterns, and effectiveness of emergency behavior intervention techniques. Current rule requires that after a personal restraint, staff involved must make every attempt to debrief concerning the incident. This new rule provides more specificity in what must be done during a follow-up to any emergency behavior intervention and includes the requirement for caregivers, not just staff, to be involved in the follow-up. It ensures that agency staff are reviewing the application of those interventions in a timely manner and that the interventions are appropriate. It also affords an additional protection for caregivers who may be accused of inappropriate use of restraint or seclusion. The cost will be recurring. Agencies were asked to estimate the cost of implementing the rule in its entirety. The estimated average cost will range from \$0.19 to \$2.66 per \$100 of revenue depending on the extent of current compliance and the number of changes that would be necessary. An estimated 36% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2381 and §749.2383: These sections require as part of an annual overall evaluation, an agency must focus on the frequency, patterns, and effectiveness of specific emergency behavior interventions. It must collect and document aggregate numbers of behavior interventions reported quarterly by type of intervention. Data must be reviewed quarterly and maintained for at least five years for review by Licensing. Current rule for other residential child-care operations require the evaluation, however, the requirement to collect and document aggregate numbers is new for all. This requirement is recommended by all national organizations as good practice for child-care operations and ensures the data is available for agencies to make necessary revisions to policies and trainings. It also provides Licensing with information on a regular basis about the use of emergency behavior interventions that can be used in reviewing how the rules on those interventions are applied by individual operations or agencies. The cost will be recurring. Agencies not already doing so were asked to estimate the cost of collecting data and performing a review of emergency behavior interventions at least quarterly. Individual estimates received ranged from \$0 to \$27,500. The estimated average cost is \$0.10 per \$100 of revenue. An estimated 23% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2551: This section states a foster family home may care for no more than six children, including children of the foster family, children receiving respite care, and children for whom the family provides regular day care. All adults and children in care must be counted in the capacity of the home. Current rules regarding home capacity do not address children in respite care, and there has been confusion about how these children should be counted. This rule is in compliance with statute regarding the capacity of foster homes. The cost will be recurring. Agencies not determining capacity of a home in accordance with the rule were asked what actions they would take if they found a capacity problem after implementing the rule and to estimate the cost of those actions. Two responders stated that the provision of respite care was the primary cause of homes exceeding capacity. The estimated average cost is \$0.58 per \$100 of revenue. An estimated 13% of the agencies are potentially impacted.

Fiscal Impact for Proposed §§749.2559, 749.2561, and 749.2563: This section states a foster group home may care for no more than 12 children, including children of the foster family and children receiving respite care. All adults and children in

care must be counted in the capacity of the home. Current rules regarding home capacity do not address children in respite care, and there has been confusion about how these children should be counted. This rule is in compliance with statute regarding the capacity of foster homes. The cost will be recurring. Agencies not determining capacity of a home in accordance with the rule were asked what actions they would take if they found a capacity problem after implementing the rule and to estimate the cost of those actions. The estimated average cost is \$0.07 per \$100 of revenue. An estimated 7% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2561 and §749.2563: These sections state the child/caregiver ratio in a foster home is based on the age of the youngest child in the home, number of children receiving treatment services, and number of children with primary medical needs. The number of children one caregiver may supervise in a foster family home is six, and in a foster group home it is eight, although either may be less when affected by other criteria. The cost will be recurring. Agencies were asked their current practices regarding ratio requirements. The ratios provided in the survey responses were then compared to the ratios in the proposed rules and the agencies potentially impacted were identified. A cost estimate was calculated based on the number of additional homes needed to accommodate the same number of children while complying with the proposed ratios. Survey data on the cost per home was then used to estimate the impact. The estimated average cost is \$0.43 per \$100 of revenue. An estimated 56% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2631: This section establishes rules regarding the length and frequency under which a child may be in respite care before it is considered a new placement. This is a new rule; there are no current rules on respite care. It is consistent with current contractual requirements for agencies accepting placement of CPS children. This rule places time limits on the length of a respite care placement for a child in order to ensure the continuity of care for children. The cost will be recurring. Agencies were asked to compare their current respite care policies to the various requirements found in the rule and estimate the cost of incorporating all elements into their policies. Cost estimates ranged from \$0 to \$100,000. The estimated average cost is \$0.14 per \$100 of revenue. An estimated 77% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2633: This section establishes rules regarding the length and frequency that a foster home may provide respite care services. This is a new rule; there are no current rules on respite care. It ensures that a foster home does not have any lengthy conflict of care issues with other children in care, or provide excessive respite care. The cost will be recurring. Agencies were asked to compare their current respite care policies to the various requirements and estimate the cost of incorporating all elements into their policies. Cost estimates ranged from \$0 to \$240,000. The estimated average cost is \$0.55 per \$100 of revenue. An estimated 71% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2821: This section requires foster parents whose home remains on inactive status for more than a year to complete at least eight hours of pre-service retraining before children can be placed in the home. This is a new rule, however the cost is determined to be very minimal. Currently staff are required to visit the home and document that it is in compliance with all standards prior to placing a child in

the home. The cost will be recurring. Agencies were asked to compare their current policies regarding pre-service training for foster parents whose home has been inactive for more than a year and estimate the cost of providing eight hours of retraining before placing children in the home. The estimated average cost is \$0.01 per \$100 of revenue. An estimated 76% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.2909: This section requires each home to have a working smoke detector in hallways or open areas outside sleeping rooms and on each level of a home with multiple levels. Depending on the size and layout of the home, others could be needed based on manufacturer or fire marshal instructions. This is a new rule and is in compliance with recommendations from fire marshal and manufacturer instruction. The cost will be recurring. Agencies were asked the number of smoke detectors needed to meet the requirement. Applying a standard cost of \$12.40 per detector to the number indicated yields the estimate of the fiscal impact. The estimated average cost is \$0.07 per \$100 of revenue. An estimated 15% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3071: This section requires agencies to have written approval from a licensed physician or a registered or licensed dietitian to serve a child a therapeutic or special diet. Dietary alternatives must be available for a child who has special health needs. This is a new rule to ensure children receive food that meets daily nutritional needs. The cost will be recurring. Agencies not already in compliance with the entire rule were asked to provide an estimate of the cost of implementing any of the parts that would be necessary to meet each the requirements. Cost estimates ranged from \$0 to \$12,000. The estimated average cost is \$0.06 per \$100 of revenue. An estimated 24% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3133: This section requires a swimming pool to be enclosed by a fence that is at least four feet high. Fence gates leading to the pool area must be self-closing and self-latching and must be locked when the pool is not in use. The current rule, for foster group homes only, requires a fence, locked entrances and exits when the pool is not in use, and locked machinery rooms. Agencies were asked the number of foster homes that have swimming pools requiring fencing or barriers to prevent a child's access and to provide a cost estimate of those modifications. Respondents identified a total of 74 homes that would be affected and estimated the average cost per home at approximately \$2,700. These costs are assumed to be first-year costs only as they are not of a recurring nature. The estimated average cost is \$1.25 per \$100 of revenue. An estimated 32% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3137: This rule establishes additional child/caregiver ratios for swimming activities. Current rules only require that operations and foster homes meet current caregiver/child ratios. The cost will be recurring. Agencies were asked how they currently manage child/caregiver ratios during swimming activities. If they are taking no steps beyond simply maintaining regular non-swimming ratios, the assumption is that additional caregivers would be needed in order to comply with the rule. The number and cost of additional caregivers is calculated based on the numbers and ages of children in care, an assumption that all are involved in swimming activities for at least three months a year, half the additional caregivers will be part-time or volunteers, and a standard cost of a caregiver's salary which is estimated to be \$18,665. Cost estimates ranged from \$20,997 to \$349,950. The estimated average cost is \$4.10

per \$100 of revenue. An estimated 34% of the agencies are potentially impacted. Increased use of volunteers beyond that assumed in the analysis would further reduce the cost, and could potentially eliminate it altogether.

Fiscal Impact for Proposed §749.3143: This rule requires that when children are swimming, at least one caregiver counted in the child/caregiver ratio must be able to swim and perform a water rescue. Current rule for foster group homes only requires a certified lifeguard on duty when the home's swimming area is in use. There is no current rule for foster family homes. The cost will be recurring. Agencies were asked to provide an explanation of the steps they would take to ensure compliance with this rule and to estimate the cost of those actions. If the rule represents no change from current practices, they were asked to state that in their response and no fiscal impact was assumed. The survey questions and responses were based on an earlier version of the rule that required all caregivers counted in the ratio to be able to swim. This information indicated an estimated average cost of \$0.08 per \$100 of revenue and an estimated 57% of the agencies potentially impacted. Although the survey data does not provide sufficient detail to re-calculate the cost impact based on the revised rule requirements of only one person being able to swim and able to perform a water rescue, it seems reasonable to assume that the changes to the rule would result in a reduced cost, and fewer agencies impacted, but no revised estimate of the amounts is available. In any event, agencies could comply with this rule by using all volunteers, which would be a zero cost for the agencies.

Fiscal Impact for Proposed §749.3345: This section states child placement management staff must review and approve the activities and related documentation of preparing a child for adoption prior to the placement of the child in the adoptive home. This is a new rule and is consistent with current CPS policy requirements. The cost will be recurring. Agencies were asked to estimate the costs of implementing the requirements of this rule or to state that either there would be no new costs, or that the rule was not applicable to their operation. Cost estimates ranged from \$1,250 to \$16,000. The estimated average cost is \$0.26 per \$100 of revenue. An estimated 10% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3503: This section requires that once birth parents become clients of an agency, child placement or child placement management staff must have at least two face-to-face contacts with birth parents prior to the relinquishment of parental rights. Contacts must take place over a period of two or more days. At least one interview must be held after the birth of the child. Staff must document all contact with birth parents. Current rule only requires two face-to-face contacts with both birth parents prior to placement, or documentation of due diligence to have the contacts. The cost will be recurring. Agencies were asked estimate the costs of implementing the requirements of this rule or to indicate that there are no new costs resulting from the rule as it is either not applicable to their operation or all the requirements are already in their policy or practice. Cost estimates ranged from \$200 to \$100,000. The estimated average cost is \$0.27 per \$100 of revenue. An estimated 35% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3633: This section requires the pre-adoptive screening be brought up to date within the 30-day period before a child is placed in the home if a child is not placed within six months of completion of the pre-adoptive home screening. For adoptive homes that are not providing foster care, the

written update must include a review and any required updating of each category of information required for an adoptive home screening, and documentation of at least one visit to the adoptive home when all household members are present within the 30-day period before a child is placed in the home. The cost will be recurring. Agencies were asked to estimate the costs of implementing the requirements or to indicate that they are either not applicable to their operation or all the requirements are already in their policy or practice. The estimated average cost is \$0.15 per \$100 of revenue. An estimated 11% of the agencies are potentially impacted.

Fiscal Impact for Proposed §749.3761: This section states if adoptive parents apply to adopt another child, before another placement is made into the adoptive home the pre-adoptive screening must be brought up to date. The update must include such things as conducting at least one individual interview with each applicant, conducting at least one individual interview with each child three years or older living in the home either full or part-time, conducting at least one individual interview with any other person living full or part time with the family, and at least one home visit when all members of the family are present. The current rule applies to all homes and requires a visit to the home within six months prior to adoptive placement. The new rule requires the visit within 30 days prior to placement, but it is only required for homes not providing foster care. This rule ensures that the home information is current when a child is placed in the home. The cost will be recurring. Agencies were asked to compare these requirements to their current policies or practices and provide a cost estimate of implementing any not currently done or to indicate that the requirements are not applicable to their operation. Cost estimates ranged from \$400 to \$68,832. The estimated average cost is \$1.55 per \$100 of revenue. An estimated 52% of the agencies are potentially impacted.

Questions about the content of the proposal may be directed to Carol Allen at (512) 438-5339 in DFPS' Licensing Division. Electronic comments may be submitted to rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-330, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DFPS will hold a public hearing on the proposal on Thursday, March 23, 2006, from 2:00 p.m. until 6:00 p.m. in the John H. Winters Building Public Hearing Room, 125-E, 701 West 51st Street, Austin, Texas. Persons with disabilities planning to attend this meeting who may need auxiliary aids or services should contact Amy Chandler at (512) 438-3134 by March 20, 2006, so appropriate arrangements can be made.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §749.1, §749.3

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1. What is the purpose of this chapter?

The purpose of this chapter is to set forth the rules that apply to child-placing agencies.

§749.3. Who is responsible for complying with the rules of this chapter?

The permit holder must ensure compliance with all rules of this chapter at all times, with the exception of those rules identified for specific types of services that your agency does not offer. For example, if we grant you a permit to offer adoption services only, you do not have to comply with rules that apply to foster care services; however, you must comply with all other rules of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601045

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.41, §749.43

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.41. What do certain pronouns mean in this chapter?

The following words have the following meanings in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Department of Family and Protective Services (DFPS).

§749.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by the Texas Higher Education Coordinating Board or an accrediting agency recognized by the Texas Higher Education Coordinating Board.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.

(4) Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record. For children in foster care who then are adopted, the adoption record also includes the child's foster care records for the 12 months prior to the adoption.

(5) Adult--A person 18 years old or older.

(6) Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child. For example, a child-placement staff that takes a child on an appointment or doctor's visit is considered a caregiver.

(B) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; or

(ii) Works with one particular child.

(7) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(8) Child in care--A child or a young adult who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home, as in the case of a child at school or at work or receiving respite care services. Unless a child has been discharged from the child-placing agency, he is considered a child in care.

(9) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(10) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(11) Days--Calendar days, unless otherwise stated.

(12) De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(13) Department--The Department of Family and Protective Services (DFPS).

(14) Diligent effort--The reasonable diligence and skill that must be exercised by a qualified professional in a particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case and qualifications and skills of other parties involved.

(15) Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(16) Disinfecting solution--A disinfecting solution may be:

(A) A self-made solution, prepared as follows:

(i) One tablespoon of regular strength liquid household chlorine bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or

(ii) One-fourth cup of regular strength liquid household chlorine bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or

(B) A commercial product that meets the Environmental Protection Agency's (EPA's) standards for "hospital grade" germicides (solutions that kill germs) that you must use according to label directions.

(17) Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(18) Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.

(19) Food service--The preparation or serving of meals or snacks.

(20) Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.

(21) Foster group home--An operation verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency.

(22) Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(23) Foster home screening--A written evaluation, prior to the placement of a child in a foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); and

(C) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(24) Foster parent--A person who provides foster care services in the foster home.

(25) Full-time--At least 30 hours per week.

(26) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(27) Health-care professional--A licensed physician, licensed or registered nurse, or other licensed medical personnel providing comprehensive preventive, diagnostic, or therapeutic medical care to the child. This does not include medical doctors or medical personnel where medical care and contraindications to medical care are outside the scope of the licensed practice.

(28) Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(29) Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away if under 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;
or

(B) Verbal threats or verbal attacks.

(30) Infant--A child from birth through 17 months.

(31) Livestock--An animal raised for human consumption or an equine animal.

(32) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(33) Long-term placement--A placement intended to last for more than 90 days.

(34) Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(35) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(36) Non-mobile--A child that is not able to move from place to place, even with assistance.

(37) Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(38) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(39) Post-adoptive services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(40) Post-placement report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

(A) Child;

- (B) Prospective adoptive parent(s);
- (C) Family of the prospective adoptive parent(s);
- (D) Environment of the prospective adoptive parent(s) and their family; and

(E) Adjustment of all individuals to the placement.

(41) Pre-adoptive home screening--A written evaluation, prior to the placement of a child in an adoptive home, of the:

- (A) Prospective adoptive parent(s);
- (B) Family of the prospective adoptive parents; and
- (C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(42) PRN--A standard order or prescription that applies "pro re nata" or "as needed according to circumstances."

(43) Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas State Board of Medical Examiners;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(G) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(44) Re-evaluation--Includes an assessment of all factors required for the initial evaluation only for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(45) Regularly--On a recurring, scheduled basis.

(46) Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least 10 minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(47) School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(48) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(49) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(50) Short-term placement--A placement used for less than 90 days while completing an assessment and/or seeking a long-term placement.

(51) State or local fire marshal--A fire official designated by the city, county, or state government.

(52) State or local sanitation official--A sanitation official designated by the city, county, or state government that is trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.

(53) Substantial bodily harm--Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(54) Toddler--A child from 18 months through 35 months old.

(55) Treatment director--The person responsible for the overall treatment program providing treatment services.

(56) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(57) Volunteer--A person who provides services to an agency without monetary compensation, including a "sponsoring family."

(58) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(59) Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601046

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SERVICES

40 TAC §§749.61, 749.63, 749.65, 749.67, 749.69, 749.71

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.61. What types of services does Licensing regulate?

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children with:

(A) Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) A Global Assessment Functioning of 50 or below;

(ii) A current DSM diagnosis;

(iii) Major self-injurious actions, including recent suicide attempts;

(iv) Difficulties that present a significant risk of harm to self or others, including frequent or unpredictable physical aggression; or

(v) A primary diagnosis of substance abuse or dependency and severe impairment because of the substance abuse;

(B) Mental Retardation, who have an intellectual functioning of 70 or below and are characterized by prominent, significant deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder) characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; and

(v) Multiple physical abilities including sensory impairments; or

(D) Primary Medical Needs, who cannot live without mechanical supports or the services of others because of non-temporary, life-threatening conditions, including the:

(i) Inability to maintain an open airway without assistance. This does not include the use of inhalers for asthma;

(ii) Inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) Use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(3) Additional Programmatic Services, which include:

(A) Transitional Living Program--A residential services program designed to serve children 16 years old or older for whom the service or treatment goal is basic life skills development toward independent living. A transitional living program includes basic life skills training and the opportunity for children to practice those skills. A transitional living program is not an independent living program; and

(B) Assessment Services--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained in order to facilitate service planning.

§749.63. Can I provide each type of service that Licensing regulates? You may provide each type of service that we regulate under the following conditions:

(1) On your permit, we list the type of service that you have been approved to provide; and

(2) Your operational policies and procedures ensure:

(A) Children are admitted appropriately;

(B) The needs of all children in care are met;

(C) Children are appropriately supervised;

(D) Children are protected from one another, if appropriate; and

(E) You meet the applicable rules of this chapter.

§749.65. What children are eligible to participate in a transitional living program?

For a child to be eligible to participate in a transitional living program, the child must be 14 years old or older.

§749.67. What are the requirements for a transitional living program?

A transitional living program must have a training program for children that demonstrates competency in the following areas:

(1) Health, general safety, and fire safety practices;

(2) Money management;

(3) Transportation skills; and

(4) Child health and safety, child development, and parenting skills, if the child is a parent of a child living with him.

§749.69. What is an "independent living program"?

An "independent living program" is a program that provides case management services to a child who lives independently, without supervi-

sion and child/caregiver ratio, and the constant presence of an on-site caregiver.

§749.71. May I have an independent living program?

Your agency may not provide an independent living program for a child in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601047

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§749.101, 749.103, 749.105, 749.107

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.101. What are my responsibilities as the permit holder before I begin operating?

Before you begin operating, you are responsible for:

(1) Ensuring that your agency is legally established to operate within Texas and complying with all applicable statutes;

(2) Submitting documentation to us that proves the legal basis of your agency;

(3) Establishing the governing body of the agency;

(4) Submitting documentation to us on the ownership of the agency. This includes names, addresses, titles, and telephone numbers for the following persons:

(A) For corporations, the officers and/or the executive committee of the governing body;

(B) For jointly or individually owned agencies, the partners or owners; or

(C) For associations, the persons and/or interests represented by the association;

(5) Having a governing body that is responsible for, and has authority over, the agency's policies and activities;

(6) Having policies that clearly state the responsibilities of the governing body;

(7) Developing operational policies and procedures that comply with or exceed the rules specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(8) Developing and providing us your plan for ensuring that:

(A) We are informed of any changes in:

(i) The location of all agency records, offices and agency homes;

(ii) Agency home verification; and

(iii) Your written professional staffing plan;

(B) Agency homes meet all applicable rules of this chapter prior to verification;

(C) Upon our request, you investigate reports of rules violations in a timely manner and submit reports of your agency's actions and findings to us for our review, follow-up, and closure;

(D) Your child placement management staff conduct or review and sign off on all investigations completed by your agency;

(E) Your child placement management staff submits an investigation report to your agency's Licensing representative within 30 days of the request from Licensing; and

(F) You evaluate the effectiveness of your system for meeting rules of this chapter and describe the process your agency will use to address problems that your evaluation system identifies.

§749.103. What are my operational responsibilities as the permit holder?

When you begin operating, you must:

(1) Designate a full-time child-placing agency administrator who meets minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);

(2) Operate according to the written policies and procedures adopted by the governing body;

(3) Maintain current, accurate, and complete master records;

(4) Ensure that all required documentation is true, current, accurate, and complete;

(5) Allow us to inspect your child-placing agency during its hours of operation;

(6) Allow us to inspect or monitor one of your foster homes at any time;

(7) Conduct ongoing evaluations of verified foster homes, including documentation of unmet rules of this chapter and correction of all deficiencies;

(8) Display your permit at your agency and a copy at any branch office;

(9) Observe the conditions of your permit;

(10) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's respon-

sibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(11) Maintain liability insurance as required by the Human Resources Code, §42.049;

(12) Comply with Chapters 42 and 43 of the Human Resources Code and all other applicable laws and rules of the Texas Administrative Code;

(13) Prior to implementing any changes, inform us of any changes to the plan you developed under §749.101 of this title (relating to What are my responsibilities as the permit holder before I begin operating?);

(14) Prepare the annual budget and control expenditures to ensure needs of the children are met; and

(15) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a prohibited controlling person.

§749.105. What responsibilities do I have for personnel policies and procedures?

You must:

(1) Develop a written organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Develop written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Develop written policies on the training requirements for employees and caregivers;

(4) Ensure that personnel policies comply with personnel requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) Ensure your employees report serious incidents and suspected abuse, neglect, or exploitation as required by the Family Code, §261.401;

(6) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality;

(7) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?); and

(8) Report to the Licensing Division within 24 hours after learning of an allegation that a person under the auspices of the agency who directly cares for or has access to a child has abused drugs within the past seven days.

§749.107. What must my conflict of interest policies include?

Your conflict of interest policies must include a:

(1) Code of conduct on the relationship between employees, contract service providers, children in placement, foster and adoptive parents, and children's families;

(2) Statement that it is a conflict of interest for any of the following people or relatives of any of the following to be verified as a foster parent or approved as an adoptive parent of the agency: an owner, member of the governing body, executive director, or any other employee or contract service provider of your agency; and

(3) Statement that it is a conflict of interest for an owner, member of the governing body, executive director, or any employee or

contract staff of the agency to enter into an independent financial relationship or transaction with a current or prospective adoptive parent, including rental agreements, personal cash loans, or sale, trade or transfer of property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601048

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. GOVERNING BODY

40 TAC §749.131, §749.133

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.131. What are the specific responsibilities of the governing body?

The governing body is responsible for:

(1) Ensuring the agency remains fiscally sound;

(2) Overseeing and ensuring the management of the agency's services and programs in compliance with your policies;

(3) Approving and having authority over the agency's operational policies and activities which must comply with rules of this chapter;

(4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;

(5) Ensuring that persons employed by or working at the agency, family members, paid consultants, or others who benefit financially from the agency, such as subcontractors or vendors, do not comprise a majority of the voting members of the governing body:

(A) Agencies that are granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and

(B) Agencies that are granted a permit by us after January 1, 2007, have two years from the date the agency is licensed by us to comply with this paragraph; and

(6) Carrying out governing body responsibilities assigned in the agency's policies and procedures.

§749.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

You must provide to us in writing any change in:

Figure: 40 TAC §749.133

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601049

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §§749.161, 749.163, 749.165

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.161. What are my general fiscal requirements?

(a) You must establish and maintain your agency on a sound fiscal basis.

(b) You must maintain complete financial records.

(c) If you provide adoption services, you must have a fee policy that clearly describes what fees you charge and what services the fees cover. We must approve your fee policy.

§749.163. What are my specific fiscal requirements?

You must:

(1) Submit documentation to us of a 12-month budget of income and expenses with the application for a new permit;

(2) Submit documentation to us of reserve funds or available credit at least equal to operating costs for the first three months of operation with the application for a new permit;

(3) Have predictable funds sufficient for the first year of operation;

(4) Demonstrate at all times that you have or will have sufficient funds to provide appropriate services for all children in your care; and

(5) Account for a child's money separately from the funds of your agency and the foster home. No child's personal earnings, allowances, or gifts may be used to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give the child's money to the child, parent, or next placement upon discharge.

§749.165. How often must I have a professional audit?

You must have a professional audit completed annually and make it available for our review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601050

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. FISCAL REQUIREMENTS FOR ADOPTION AGENCIES

40 TAC §§749.191, 749.193, 749.195, 749.197, 749.199

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.191. What type of financial report must I submit to Licensing if I provide adoption services?

(a) You must submit an annual financial report to us on a form that we provide. The report must include:

(1) Information on adoption-related income from all sources, including the source of the income and the amount; and

(2) Adoption-related agency expenses, including the expense category and the category detail.

(b) You must submit the financial report to us within 60 days of the end of your agency's fiscal year.

§749.193. May I make payments for adoption referrals?

No, you may not make any payments for adoption referrals.

§749.195. What types of fees may I collect prior to the completion and approval of a home study?

You may only accept reasonable application fees and home study fees prior to the completion of the home study.

§749.197. For adoption services, what fee policies must I have?

(a) For adoption services, you must have an adoption fee or adoption fee schedule that you apply to all clients. The policy must include the type of expenditures you will meet for birth parents and whether you will do so through an overall fee, pass-through expenses, or some combination. Policies on pass-through expenses must comply with all requirements listed in §749.273 of this title (relating to What must I do if I pass through expenses to adoptive families?).

(b) If you charge additional fees, your policy must explain clearly what the fees cover.

(c) You must have a clear policy on refunds.

§749.199. Must I charge the same fees for all adoptions?

No, you are not required to charge the same fees for all adoptions. The fee or fee schedule may take into consideration relevant factors such as adoptive placement of children considered to be hard to place. You may also have a sliding scale fee schedule. The parameters of any differential fee schedules must be specified and equally applied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601051

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. FINANCIAL ASSISTANCE TO BIRTH MOTHERS

40 TAC §§749.231, 749.233, 749.235, 749.237, 749.239, 749.241, 749.243, 749.245

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.231. What financial assistance may I provide for a birth mother?

(a) You may provide financial assistance to a birth mother to meet her reasonable and necessary living expenses and legal costs.

(b) Reasonable and necessary living expenses include:

- (1) Housing expenses;
- (2) Necessary utilities, such as electric, water, or telephone bills;
- (3) Food for the birth mother;

(4) Travel expenses for transportation necessary to support the pregnancy, such as gasoline or bus fares to medical appointments or the grocery store;

(5) Medical costs; and

(6) Child-care or foster care while a birth mother is hospitalized or unable to care for her children.

(c) Reasonable and necessary living expenses do not include:

(1) Any expenses met by a birth mother's existing resources;

(2) Any expenses supporting other family members;

(3) Any expenses for recreational and leisure activities; or

(4) The purchase of an automobile.

§749.233. During what period of time may I provide financial assistance to a birth mother?

Financial assistance may only be provided:

(1) During the time of the pregnancy; and

(2) After the pregnancy, during the time the birth mother requires inpatient or outpatient postpartum care.

§749.235. How do I determine the birth mother's need for financial assistance?

(a) You must review the birth mother's financial resources.

(b) Your evaluation must include an evaluation of family support, medical insurance, and other resources available.

(c) The evaluation must justify a payment you make for the birth mother's reasonable and necessary living expenses and legal costs related to the adoption and, if applicable, post partum care.

(d) You must document the evaluation and provide a copy to the birth mother.

§749.237. How do I document financial assistance that I provide for a birth mother?

(a) You must document financial assistance that you provide for the birth mother through receipts.

(b) A receipt must include the date, payee identification, purpose of payment, and documentation that the funds were expended for services rendered or goods provided for the birth mother.

(c) You may not use cancelled checks as documentation.

(d) You must organize and maintain this documentation in the individual record of the birth mother.

§749.239. May I provide cash payments to birth mothers?

(a) For reasonable and necessary living expenses, you may provide cash payments to birth mothers to cover the cost of day-to-day routine purchases, such as food, household supplies, personal hygiene or grooming items, and gasoline or public transportation if your policies:

(1) State when and for what purpose you can make cash payments to a birth mother;

(2) Establish a maximum amount per category, per time period, based on the current rates in the community in which the care is provided;

(3) Require you to obtain receipts from a birth mother acknowledging receipt of the payments; and

(4) Provide a method for documenting that the funds are spent for the goods and/or services intended.

(b) Each cash disbursement may cover a period of up to one month.

§749.241. If a birth mother decides not to relinquish a child for adoption, may I require her to repay my agency or the adoptive parent for expenses and services incurred?

(a) No, you may not require a birth mother to repay you for expenses and/or services incurred.

(b) You must inform a birth mother of this policy in writing prior to establishing any formal relationship between your agency and a birth mother and post it in the agency's offices in a place routinely visible to birth mothers. The written policy provided to the birth mother must be in the language spoken and read by the birth mother.

§749.243. May I provide foster care services free of charge or at a reduced rate to a birth mother that needs time to make a decision about adoptive placement?

Yes, as long as the foster care services provided free of charge or at a reduced rate are not contingent upon the relinquishment of the child for adoption, you may provide the foster care services.

§749.245. If a birth mother's needs are met through existing resources, can I disrupt that arrangement?

(a) If a birth mother's needs are met through an existing resource, you must not, by action or advice, disrupt that unless your child placement management staff determines there is imminent danger to the basic health or safety of the birth parent or the child, including psychological or emotional abuse. For example, if family members are providing housing at no cost to a birth mother, your agency may not advise the birth mother to move to an apartment for which your agency would pay rent.

(b) This rule applies to any kind of financial assistance.

(c) You must document the existence of imminent danger.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601052

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. FISCAL ACCOUNTABILITY/PASS-THROUGH EXPENSES

40 TAC §749.271, §749.273

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.271. May I require adoptive families to reimburse me for expenses incurred by the birth mother?

(a) You may pass through to the adoptive parents certain expenses that:

(1) You incur on behalf of the birth mother; or

(2) The birth mother incurs.

(b) You cannot pass through expenses for medical or other services that were met through a birth mother's insurance company or some other source or that were provided free to the birth mother.

§749.273. What must I do if I pass through expenses to adoptive families?

You must meet the following requirements if you pass through the birth mother's expenses to adoptive families:

(1) Your fee policy must include a complete description of the types of expenses that you may pass through to adoptive families.

(2) The fee policy must comply with the financial assistance requirements in Division 5 of this subchapter (relating to Financial Assistance to Birth Mothers).

(3) You must prepare an individual report for each case where you pass through expenses to the adoptive family. The report must be organized by expense category and include the date, amount, and a description of each expenditure. You must give the report to the adoptive family. The report must be available for our review.

(4) If requested by an adoptive parent, you must provide an itemized list of how pass through money was expended and if there is a surplus.

(5) With the exception of unforeseeable medical and legal expenses, you must provide to the adoptive family a written estimate of the pass-through expenses you anticipate will be associated with the adoption. You must provide this estimate before the adoptive family makes any financial commitment to the placement.

(6) If you exceed the estimated expenses by more than 10%, you must obtain acknowledgement and agreement in writing from the adoptive parents that they will incur the additional expenses. If you cannot reach an agreement with the adoptive parents, you must incur the additional expenses.

(7) If there is a surplus of pass through money, you must refund the surplus back to the adoptive parents.

(8) You must inform the adoptive family, in writing, that:

(A) A birth mother may choose not to relinquish a child for adoption; and

(B) You are prohibited from seeking repayment from that birth mother for expenses incurred in providing adoption services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601053
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 7. BRANCH OFFICES

40 TAC §749.301, §749.303

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.301. What is a branch office?

(a) A branch office is anywhere the child placement staff and child master records or foster/adoptive home master records are located.

(b) You may operate a branch office if you:

- (1) Maintain compliance with the rules of this chapter; and
- (2) Are in good standing with us.

§749.303. What must I do before opening a branch office?

At least 30 days prior to the opening of a branch office, you must provide us the following information with your application to amend your license:

- (1) The address, telephone numbers (if available), and office hours for the branch office;
- (2) The name, qualifications, and contact information of the administrative staff person who will be primarily responsible for the day-to-day operation of the branch office;
- (3) The name(s), qualifications, and contact information of the child placement management staff that will be responsible for child-placing activities of the branch office;
- (4) The name(s) and qualifications of other employees who will be involved in child-placing activities at the branch office; and
- (5) A written plan describing how child placement staff will supervise child-placement activities provided from the branch office. The plan must describe:
 - (A) Who will be responsible for the on-going supervision and support to the employees;
 - (B) How often there will be in-person contact and supervision of the employees;
 - (C) Who will be responsible for providing support in case of emergencies or placement crises; and
 - (D) How employees will be provided with reasonable access to their supervisor(s).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601054
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 8. AGENCY POLICIES

40 TAC §§749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.331. What are the general requirements for my agency's policies?

(a) The policies that we require must be written and they must indicate the approval of the governing body, date of approval, and effective date.

(b) The policies must be clearly stated and comply with the rules of this chapter.

(c) The governing body must approve the policies.

(d) All employees and caregivers must be made aware of and follow your policies and procedures. A copy of your policies and procedures must be maintained at the agency and available for review by an employee or caregiver.

(e) All policies must be available for review by our staff and your clients, upon request.

(f) You must report any significant change to the policies to us at least seven days before implementing the change.

(g) You must maintain copies of all current and previous policies for at least two years.

§749.333. What are the requirements for my admission policies?

(a) Your admission policies must:

(1) Have a program statement that describes the program's goals, the services provided, and the population of children served by the program;

(2) Describe the specific characteristics of children the program will serve, such as the age range, gender, and needs of children served; and

(3) Indicate whether you will admit children on an emergency basis.

(b) If you provide treatment services, you must have admission policies describing the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that your program is designed to treat.

§749.335. What information must my placement policy contain?
Your placement policy must describe how you will:

(1) Ensure that your agency will not place a child before determining that foster care and/or adoption is appropriate for the child;

(2) Match a child with a foster and/or adoptive home to ensure that the child's needs are met;

(3) Make every effort to place siblings together and document when it is necessary to separate siblings groups; and

(4) Ensure contact between siblings is maintained when siblings are not placed together or document why contact is not appropriate for one or more of the siblings.

§749.337. What policies must I provide to the person placing the child?

(a) You must give copies of the following policies to the person legally authorized to place the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies;

(4) Treatment services policies, if the child is receiving treatment; and

(5) Adoption policies.

(b) Upon request you must make available to the person legally authorized to place the child any other policies that are required by us.

(c) The policies listed in subsection (a) of this section must also be made available to employees, contract staff, foster parents, and adoptive parents.

§749.339. What child-care policies must I develop?
Your must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;

(3) The child's rights to correspond by telephone with family members and friends;

(4) The child's rights to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

(5) Personal possessions a child is or is not allowed to have;

(6) Emergency behavior intervention techniques;

(7) Discipline policies including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:

(A) Guide employees and caregivers in methods used for discipline of a child in care;

(B) Include measures for positive responses to appropriate behavior;

(C) Make clear that discipline of any type is inappropriate and not permitted for infants and toddlers; and

(D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;

(8) Any religious program or activity that you offer, including whether children are required to participate in religious activities with caregivers or staff;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the home are allowed and what protocols will be used;

(11) Program expectations and rules for children;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child; and

(16) Your plan for providing health-care services to a child with primary medical needs.

§749.341. What emergency behavior intervention policies must I develop?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions, including risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) How you will meet the following requirements:

(A) During admission, explain and document the following to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you authorize;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments on any emergency behavior intervention; and

(ix) The process for making comments on any emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) At admission, requirements for obtaining each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process, and revisiting this information with the child and caregivers during each post emergency behavior intervention discussion;

(6) Requirement that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the need for the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home; or

(B) A client or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home.

§749.343. What policies must I develop on the discipline of children in foster care and pre-adoptive care?

You must develop policies that guide caregivers in methods used for discipline of children in foster care or adoptive placement prior to consummation, and include:

(1) Measures for positive responses to appropriate behavior;

(2) If you work with infants and toddlers, a statement that discipline of any type is not appropriate or permitted for that age group; and

(3) The importance of nurturing behavior, stimulation, and promptly meeting the child's needs.

§749.345. What foster care policies must I develop?

You must develop foster care policies that include the following:

(1) Criteria and procedures for screening and accepting foster parent applicants or agency home caregivers who can meet the needs of the children your agency serves;

(2) Criteria for making decisions about the number, ages, gender, and needs of children who may be placed in a foster home;

(3) Respective rights and responsibilities of the agency and foster parents;

(4) Pre-service and annual training requirements for foster parents or agency home caregivers; and

(5) Policies on how you will provide services if the home provides more than one type of care.

§749.347. What policies must I develop on the rights and responsibilities of the agency, foster parents, and caregivers?

You must develop a statement of the rights and responsibilities of the agency and foster parents that address the relationship between the agency and the foster parents and must specify:

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon;

(2) Training requirements for foster parents and caregivers, including:

(A) What part you will provide;

(B) What part the foster parents and caregivers must acquire on their own; and

(C) A statement about who will be responsible for training fees, travel expenses, and associated child-care costs;

(3) The channels through which you and the foster parents will communicate with each other;

(4) The amount of reimbursement(s) you will provide the foster parents and when the foster parents will receive it;

(5) The kind and amount of information and pre-placement contact you will provide, so the foster parents can make an informed decision about a placement;

(6) How much discretion the foster parents have in accepting or declining specific placements;

(7) The kind and amount of support provided to all foster families and any services available to foster parents, including respite care, homemaker services, or counseling;

(8) The kind and amount of information about a child (including previous placements) that you will give to foster parents where placing or considering placing the child;

(9) The kind of information you expect the foster parents to report to you and within what time frames;

(10) If treatment is needed for any child in the home, the foster parents' role in the treatment process, including expectations for the foster parents' participation in service planning and implementation; and

(11) The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal.

§749.349. What additional policies must I develop for foster parents that provide treatment services?

(a) You must develop additional policies for foster parents that provide treatment services. These policies must include:

- (1) Ongoing assessments of the caregiver's abilities to meet the needs of the children in care;
- (2) Safeguards for protecting the children and caregivers;
- (3) Emergency back-up and support systems for the caregivers; and
- (4) A procedure for your review and approval of paragraphs (1)-(3) of this subsection.

(b) Your child placement management staff must review and approve these policies in writing.

§749.351. What policies must I develop for fosters parents who offer a transitional living program?

If foster parents offer a transitional living program, you must develop policies that address the following:

- (1) Criteria used to select participants for the program;
- (2) Supervision of participants;
- (3) Expected behaviors of participants and consequences for failure to comply;
- (4) Training, education, and experiences to be achieved in the program; and
- (5) Roles of participants, agency employees, contract staff, and caregivers.

§749.353. What policies must I develop for babysitters and respite care in foster homes?

You must develop policies for babysitters and respite care in foster homes that include:

- (1) Minimum age for care providers;
- (2) Minimum amount and type of prior child-care experience that a provider must have;
- (3) Amount and type of training a provider must have;
- (4) Reference and background information that foster parents must obtain before using the provider;
- (5) Amount of time a provider can care for children;
- (6) Number of children that a provider can care for;
- (7) Information that the foster parents must share with a provider, including information about the children in care and emergency contact information for the foster parent and the agency;
- (8) Specific care instructions that the foster parents must share with a provider for children with treatment needs;
- (9) A method for contact between the foster parent and provider during the time of the provider's care;
- (10) Procedures for agency review and approval of arrangements; and
- (11) Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

§749.355. What policies must I develop for a legal risk placement program for foster-adoptive families?

If you operate a legal risk placement program, you must develop policies that specify:

(1) The requirements for foster-adoptive families to participate in this program; and

(2) Criteria used in selecting children for appropriate legal-risk placements.

§749.357. What policies must I develop if I offer adoption services? You must develop policies for adoption services that include:

(1) Procedures and criteria for qualifying, screening, and selecting adoptive parents, including the:

(A) Criteria you will use to evaluate potential adoptive parents;

(B) Criteria you will use to make decisions about placing specific children with an adoptive family; and

(C) Procedures you will use to implement the selection criteria;

(2) Training and programs for the adoptive parents;

(3) Statement of the rights and responsibilities of the agency and adoptive parents prior to the consummation of the adoption;

(4) Plan for review of adoption service plans appropriate to the needs of children served in the adoption program;

(5) How you will assist the adoptive homes on how to best preserve the cultural identity of the children in their care;

(6) Fees charged to adoptive parents and reimbursements to birth mothers;

(7) Services that will be offered to birth parents;

(8) Degree to which birth parents may be involved in planning for and placing their child; and

(9) Post adoption services that will be offered to adoptive parents, adopted children, and birth parents.

§749.359. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include volunteer job descriptions and/or responsibilities;

(2) Address volunteer qualifications, screening and selection procedures, and orientation and training programs; and

(3) Address supervision of volunteers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601055

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. CLIENTS AND APPEALS

40 TAC §§749.421, 749.423, 749.425

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.421. Who are my clients?

(a) Your child clients include children in:

- (1) Foster care; and
- (2) Pre-consummated adoptive placement.

(b) Your adult clients include:

- (1) Birth parent, managing conservator, or whoever has legal responsibility for the child that you are placing;
- (2) Foster parent applicants;
- (3) Foster parents;
- (4) Adoptive applicants;
- (5) Adoptive parents prior to consummation of the adoption; and
- (6) Adoptive parents and birth parents seeking post adoptive services.

(c) Anyone can call you for information or attend a meeting open to all interested persons, but a person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.

§749.423. What rights do my adult clients have?

You must inform your adult clients:

- (1) That the rules of this chapter, the compliance status reports, and your policies are available for review upon their request;
- (2) Of their right to appeal agency actions and decisions that affect them, and the procedures for making an appeal; and
- (3) Of procedures for making a complaint to us.

§749.425. What must my appeal process include?

(a) You must have a written appeal process for your adult clients in regard to your actions and decisions that affect those clients.

(b) The process must describe:

- (1) How you will inform clients of their right to appeal;
- (2) The procedures for making an appeal;
- (3) Who will hear an appeal and make the decision;
- (4) How the person who requests an appeal will find out about the decision;
- (5) Time frames for making a decision and communicating the decision to the complainant; and
- (6) The basis for an appeal decision.

(c) You must provide this information to each birth parent, foster parent applicant, or adoptive applicant before you make that person your client.

(d) Your appeal process does not have to involve anyone from outside your agency. An internal review procedure is sufficient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601056

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. SERIOUS INCIDENT REPORTS

40 TAC §§749.501, 749.503, 749.505, 749.507, 749.509, 749.511, 749.513, 749.515

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.501. What is a serious incident?

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child.

§749.503. When must I report and document a serious incident involving a child in my care?

(a) You must report and document the following types of serious incidents. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §749.503(a)

(b) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident. You do have to report the incident to law enforcement, as outlined in the chart above. You also have to report the incident to the parents, if the adult resident is not capable of making decisions about his own care.

§749.505. What constitutes a suicide attempt by a child?

A suicide attempt includes a child's attempt to take his own life using means or methods for causing his death, including a means or method that the child believes is capable of causing his death.

§749.507. When must I report a serious incident involving my agency, one of my foster homes, an employee, contract staff, or a volunteer?

You must report and document the following types of serious incidents to the following entities within the specified time frame:

Figure: 40 TAC §749.507

§749.509. How do I report a serious incident to Licensing?

(a) Serious incidents that are required to be reported in writing must be forwarded to your Licensing representative (See §749.507 (3), (4), and (9) of this title (relating to When must I report a serious incident involving my agency, one of my foster homes, an employee, contract staff, or a volunteer?)).

(b) All other serious incident reports must be made to the Child Abuse Hotline.

§749.511. How must I document a serious incident?

A serious incident must be documented in a written report that includes the following information:

(1) The name of the foster home, physical address, and telephone number;

(2) The time and date of the incident;

(3) The name, age, gender, and date of admission of the child or children involved;

(4) The names of all adults involved and their role in relation to the child(ren);

(5) The names or other means of identifying witnesses to the incident, if any;

(6) The nature of the incident;

(7) The circumstances surrounding the incident;

(8) Interventions made during and after the incident, such as medical interventions, contacts made, and other follow-up actions;

(9) The treating licensed health-care professional's name, findings, and treatment, if any; and

(10) The resolution of the incident.

§749.513. What additional documentation must I include with a written serious incident report?

You must include the following additional documentation with a written serious incident report, as applicable:

Figure: 40 TAC §749.513

§749.515. Where must I keep incident reports?

(a) You must keep a copy of the incident reports in the foster home for three months and the originals in the agency for two years. The reports must be kept in a place where they are easily accessible.

(b) You must also keep a copy of the report in the child's record.

(c) You must permit Licensing to make a copy of incident reports, as requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601057

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. GENERAL REQUIREMENTS FOR ALL RECORDS

40 TAC §§749.531, 749.533, 749.535, 749.537

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.531. If I keep electronic records, what procedures must I have for those records?

(a) If you keep electronic records, you must develop procedures that address what must be in the external paper file and what can be in the electronic file.

(b) You must limit access to your electronic files to:

(1) Persons within your agency authorized to see specific information; and

(2) Others outside of your agency authorized by law to have access to specific information.

(c) You must develop policies that address the following:

(1) Computer security systems, including confidentiality, passwords, and employee procedures to ensure security of the system;

(2) Requirements for routine back up of data; and

(3) Anti-virus protection systems.

§749.533. What procedures must I have for protecting records?

You must have procedures for protecting electronic and paper records from destruction, loss, and unauthorized access.

§749.535. How current must a record be?

(a) All documentation must be in the record no later than 30 days after the occurrence or event.

(b) Copies of any records kept by the foster parents must be submitted to you each month. You must file these records in the child's record.

§749.537. Must I make records available for Licensing to review?

(a) You must make all active records available for our immediate review and reproduction.

(b) You must make all archived records available for our review and reproduction within 24 hours.

(c) We must have reasonable access to your storage and file areas in order to monitor your record keeping.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601058

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PERSONNEL RECORDS

40 TAC §§749.551, 749.553, 749.555

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.551. Where must I maintain personnel records?

- (a) You must maintain active personnel records at the agency.
- (b) You must maintain archived personnel records at the agency and/or in a central administratively designated location.
- (c) You may archive entire closed personnel records electronically.
- (d) Your system for maintaining all personnel records must be uniform throughout the agency.
- (e) You must maintain a master list of active and archived personnel records and their location in the main office of the agency.

§749.553. What information must the personnel record of an employee include?

For each employee and caregiver, the personnel record must include:

- (1) Documentation showing the date of employment;
- (2) Documentation showing how the person meets the minimum age and qualifications for the position;
- (3) A current job description;
- (4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the job position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;
- (5) A copy of a health card or licensed health-care professional's statement verifying the person is free of active tuberculosis, if required by the regional Department of State Health Services TB program or local health authority before having contact with children in

care, see §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?) and §749.1419 of this title (relating to What must I do if someone in my agency has a positive tuberculosis test result?);

(6) A notarized Licensing Affidavit for Applicants for Employment form as specified in Human Resources Code, §42.059;

(7) A statement signed and dated by the employee that he has read a copy of the:

(A) Operational policies; and

(B) Personnel policies;

(8) A statement signed and dated by the employee indicating that he must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee;

(9) Proof of request for background checks;

(10) A copy of the valid driver's license for each person who transports a child;

(11) A record of training and training hours;

(12) Any documentation of the person's tenure with the agency; and

(13) The date and reason for the person's separation from the agency, if applicable.

§749.555. How long must I maintain personnel records?

(a) You must maintain annual training records for current personnel for the last full training year and current training year.

(b) With the exception of subsection (a) of this section, you must keep personnel records for a year after an employee's last day on the job, or until any investigation involving the employee is resolved, whichever is longer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601059

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. CLIENT RECORDS

40 TAC §§749.571, 749.573, 749.575, 749.577, 749.579, 749.581, 749.583, 749.585, 749.587

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.571. What client records must I maintain?

You must maintain master records for all clients. The records must be individualized, current, and complete.

§749.573. Where must I maintain active master records for clients?

(a) You must maintain the active master case record for a child at the office where the child placement staff that is managing the child's placement is located.

(b) You must maintain the active master record for a foster or adoptive home at the office where the child placement staff that is managing the home is located.

(c) You must maintain a master list of active client records and their location in the main office of the agency.

§749.575. What is an active record for a child?

An active child record consists of the child's most recent 12 months of service.

§749.577. What information must an active child record include?

For each child, the active record must include:

(1) The child's full name and another method of identifying the child, such as a client number;

(2) Documentation of known allergies on the exterior of the child's record or in another location where the information is clearly visible to persons with access to the record; and

(3) The date of each data entry and the signature of the person who makes the data entry.

§749.579. How must I maintain an active child record?

On an on-going basis, you must ensure that each child's record is:

(1) Kept accurate and current;

(2) Locked and kept in a safe location or locations; and

(3) Kept confidential as required by law.

§749.581. Where must I maintain archived client records?

(a) You must maintain archived client records at the agency and/or in a central administratively designated location.

(b) You may archive entire closed client records electronically.

(c) Your system for maintaining all client records must be uniform throughout the agency.

(d) You must maintain a master list of archived client records and their location in the main office of the agency.

§749.583. Who must consent to the release of a child's record?

Unless you are releasing information to a parent or us, you may not release any portion of a child's record to any agency, organization, or individual without the written consent of the person legally authorized to consent to the release.

§749.585. How long must I maintain client records?

(a) For children placed in adoption, you must maintain complete child, birth parent, and adoptive family records permanently or transfer them, as appropriate, to the Bureau of Vital Statistics.

(b) You must maintain complete child records for a child placed in foster care:

(1) For at least two years after the child is discharged; and

(2) Until the resolution of any investigation of a serious incident that occurred while the child was in care with your agency.

(c) You must maintain records for foster homes for at least five years after the foster home is closed. This includes foster homes that did not receive placements.

(d) You must maintain records for approved adoptive applicants with whom you did not place a child for at least five years after the family withdraws or you close consideration of the family for a placement.

(e) You must maintain records for applicants for foster or adoptive homes whom you did not approve for at least one year after denial of the application.

(f) You do not have to maintain records of foster or adoptive home applicants who drop out before the completion of a home study.

§749.587. How must I handle adoption records if I cease operating?

(a) If you cease operating, you must transfer adoption records to:

(1) The Department of State Health Services, Bureau of Vital Statistics; or

(2) Another licensed child-placing agency. If you transfer your records to another child-placing agency, you must inform the Bureau of Vital Statistics, in writing, of the closing and of the location of the adoption records. You must send a copy of the letter you send to the Bureau of Vital Statistics to the local Licensing office.

(b) You must transfer the records within the time frame specified by the Bureau of Vital Statistics.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601060

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §§749.601, 749.603, 749.605, 749.607, 749.609, 749.611

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.601. What must my written professional staffing plan include?

Your written professional staffing plan must:

(1) Demonstrate that the number, qualifications, and responsibilities of professional staff, including the child-placing agency administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(2) Describe in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services;

(3) Describe how employees are assigned responsibilities for providing services; and

(4) Describe how staff or service providers support clients served through branch offices.

§749.603. Does education received outside of the United States count toward educational qualifications?

Yes, however you must provide supporting information indicating that the education is equivalent to the minimum educational qualifications for the position for which the person is applying. Documents written in a foreign language must be translated into English.

§749.605. What minimum qualifications must all employees meet?

(a) An employee's behavior or health status must not present a danger to children in care.

(b) Each employee who is regularly or frequently present while children are in care must:

(1) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(2) Have a current record of a tuberculosis examination, showing the employee is free of contagious TB, if required by the regional Texas Department of State Health Services or local health authority. If the result is positive, the agency must follow through with all recommendations for further testing. All public health precautions and treatment must be documented and carried out in accordance with public health authority recommendations;

(3) Be physically, mentally, and emotionally capable of performing assigned tasks and must have the skills necessary to perform assigned tasks; and

(4) Complete a notarized Licensing Affidavit for Applicants for Employment form, as specified in Human Resources Code, §42.059.

§749.607. What general responsibilities do all employees and caregivers have?

Regardless of whether the employee is counted in the child/caregiver ratio, each employee must:

(1) Demonstrate competency, prudent judgment, and self-control in the presence of children and when performing assigned responsibilities;

(2) Report suspected abuse, neglect, and exploitation to the Child Abuse Hotline and to the designated administrator or supervisor; and

(3) Know and comply with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other applicable laws.

§749.609. What are the requirements for tuberculosis testing?

Before having contact with children in care, all caregivers, employees, contract staff, volunteers, foster parents, foster home household members, and employees in foster homes must be tested for tuberculosis according to the recommendations of local health authorities, or if you do not have a local health authority, the regional Department of State Health Services.

§749.611. How do I document the recommendations of a local health authority or the regional Department of State Health Services for tuberculosis testing?

(a) You must have on file a letter from your local health authority or the regional Department of State Health Services stating its recommendations for tuberculosis testing for the area(s) where your agency offices and foster homes are located.

(b) This documentation must be available for our review in any office:

(1) Where an employee file is located;

(2) That monitors the foster home; and

(3) Where a foster home's file is located.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601061

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

40 TAC §§749.631, 749.633, 749.635, 749.637

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.631. What qualifications must a child-placing agency administrator meet?

A child-placing agency administrator must:

(1) Meet the qualifications established by the agency's governing body;

(2) Be a Licensed Child-Placing Agency Administrator according to Chapter 43 of the Human Resources Code and Subchapter N of Chapter 745 of this title (relating to Administrator's Licensing); and

(3) Be a full-time employee of the agency.

§749.633. Can a child-placing agency administrator be an administrator for both a child-placing agency and a general residential operation or a residential treatment center?

(a) Except as provided in subsection (b) of this section, a child-placing agency administrator can be an administrator for a child-placing agency and a general operation or a residential treatment center if:

(1) Both the agency and the operation are in good standing with Licensing;

(2) The agency's and the operations' size and scope are manageable by one person, which is clarified in the written professional staffing plan; and

(3) The child-placing agency is not managing more than 20 foster homes.

(b) An agency that provides assessment services may designate their child-placing agency administrator or another employee as the person responsible for administering those services. The person designated must:

(1) Be a Licensed Child-Placing Agency Administrator;

(2) Have a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include:

(A) A minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) At least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or

(3) Have a master's degree in a human services field and at least three years of supervised child-placing experience.

§749.635. What responsibilities must the child-placing agency administrator designated to be responsible for the administration of the agency have?

The child-placing agency administrator must:

(1) Have daily supervision and overall administrative responsibility for all of your offices, including your main office and any branch.

(2) Be responsible for or assign responsibility for:

(A) Administering and managing the agency according to the policies adopted by the governing body;

(B) Ensuring that the agency complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(C) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations; and

(D) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the agency or foster homes.

§749.637. Who must have overall administrative responsibility when the child-placing agency administrator is absent on a frequent and/or extended basis?

(a) The child-placing agency administrator must designate an employee to be responsible for the overall administration of the agency while the administrator is absent from the agency on a frequent and/or extended basis.

(b) The designee must be a Licensed Child-Placing Agency Administrator as required in Chapter 43 of the Human Resources Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601062

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. CHILD PLACEMENT STAFF

40 TAC §§749.661, 749.663, 749.665, 749.667, 749.669, 749.671, 749.673, 749.675, 749.677, 749.679

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.661. What employees must my agency have to perform child placement activities?

Your agency must have the following employees identified:

(1) Child placement staff; and

(2) Child placement management staff.

§749.663. What are the responsibilities of child placement staff?

(a) Child placement staff are responsible for:

(1) Deciding whether to admit a child for placement, including completion of an admission assessment and any other evaluation of a child for placement;

(2) Placing a child into a foster home, adoptive home, or any other substitute living arrangement;

(3) Managing the case of a child in any substitute living arrangement, including:

(A) Developing and updating of service plans;

(B) Stewarding direct contact with the child and the adoptive parents, foster parents, or other caregivers; and

(C) Performing any additional case management activities;

(4) Case management and service delivery to birth parents;
(5) Orientation, assessment, and verification of foster parents;

(6) Orientation, assessment, and approval of adoptive parents; and

(7) Monitoring and providing support services to foster parents, including the initiation of development plans, corrective actions, or adverse actions.

(b) Child placement management staff may directly perform any of these responsibilities.

§749.665. What are the requirements for contact between child placement staff and children in care?

(a) Child-placement staff must have monthly face-to-face contact with a child in care. However, staff can miss two visits per year, provided a child does not go longer than 60 days without a visit. These contacts are to ensure the:

(1) Needs of a child are being met; and

(2) Placement continues to be appropriate.

(b) If the child is able to communicate in a meaningful way, the contact with the child must:

(1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;

(2) Provide an opportunity to meet in private; and

(3) Provide an opportunity for the child to express his feelings about how the placement is working out.

(c) If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child's placement, including verification that the placement is meeting the child's needs as specified in the service plan.

(d) The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections (b) and (c) of this section.

(e) Child placement management staff must review and approve documentation of contacts.

§749.667. What are the responsibilities of child placement management staff?

Child placement management staff must:

(1) Review and approve:

(A) All child placement activities, as outlined in §749.663 of this title (relating to What are the responsibilities of child placement staff?);

(B) Investigation findings; and

(C) Corrective and adverse action plans involving foster families; and

(2) Supervise less qualified or experienced employees, if any, including planning for the employee's professional development and taking any other appropriate action in regard to their child-placing decisions.

§749.669. How do child placement management staff document approval?

Child placement management staff must review and approve by signing and dating the following documents:

(1) Assessment/admission forms;

(2) Initial and subsequent placement documents;

(3) Foster and adoptive home studies;

(4) Investigation reports;

(5) Foster home development and/or corrective action plans;

(6) Initial and updated service plans;

(7) Discharge or transfer plans and summaries;

(8) Any restrictions imposed on the child for more than seven days that have not been approved by the treatment director or service planning team, in any monthly re-evaluations of a restriction that continues for more than 30 days;

(9) Any restrictions to communication and visitation with family imposed on a child;

(10) Any restrictions to a particular room or building for more than 24 hours imposed on a child; and

(11) Child placement staff contacts with children per §749.665 of this title (relating to What are the requirements for contact between child placement staff and children in care?).

§749.671. What is a corrective or adverse action?

A corrective or adverse action can be anything that places a restriction or condition on the foster homes verification, including the removal of the verification.

§749.673. What are the qualifications that an employee must have to perform child placement activities?

In addition to the requirements that all employees must meet, employees who perform child placement activities must meet the following qualifications:

Figure: 40 TAC §749.673

§749.675. What are the qualifications an employee must have to perform child placement management activities?

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:

Figure: 40 TAC §749.675

§749.677. What are the requirements for child placement management staff at a branch office?

(a) You must have a child placement management staff assigned for each branch office to perform the child-placement activities.

(b) Your child placement management staff must have and document at least 10 monthly supervision conferences per year with a branch-office employee who performs child-placing activities.

(c) Employees performing child-placing activities must have reasonable access to their supervisor(s).

§749.679. What are the requirements for the caseloads of my child placement staff?

There are no caseload requirements for child placement staff; however, you must ensure manageable caseloads that allow child placement staff to meet the needs of children in care and adequately support foster and adoptive homes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601063

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. TREATMENT DIRECTOR

40 TAC §§749.721, 749.723, 749.725, 749.727

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.721. Must I have a treatment director?

You must have a treatment director if you provide treatment services to 30 or more children at any one time, or to more than 50% of the children in your care. Your treatment director must be a full-time employee of your agency.

§749.723. What are the responsibilities of my treatment director?

(a) Your treatment director:

(1) Is responsible for your overall treatment program, including clinical responsibility for the management of your agency's therapeutic interventions; and

(2) Provides direction and overall management of your treatment program.

(b) When assigning responsibilities to your treatment director, you must ensure that the treatment director can oversee the treatment of all children receiving treatment services.

§749.725. What qualifications must a treatment director have?

(a) A treatment director that provides or oversees treatment services for children with mental retardation or children with pervasive developmental disorders must be:

(1) Licensed as a psychiatrist, psychologist, professional counselor, clinical social worker, marriage and family therapist, or registered nurse; or

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field and have three years of experience working with children with mental retardation or a pervasive developmental disorder.

(b) A treatment director that provides or oversees treatment services for children with primary medical needs must be a physician or a licensed registered nurse.

(c) A treatment director that provides or oversees treatment services for children with emotional disorders must:

(1) Be a psychiatrist or psychologist;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting.

§749.727. If I provide more than one type of treatment service, can I have one treatment director?

Yes, you can have one treatment director if he meets the required qualifications for the most prevalent treatment services your agency offers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601064

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. TREATMENT SERVICES PROVIDED BY NURSING PROFESSIONALS

40 TAC §749.741, §749.743

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.741. What treatment services must a registered nurse provide if I support a child with primary medical needs?

(a) The registered nurse must be on staff or on contract to respond to emergencies, questions, or other medical issues.

(b) The registered nurse must:

(1) Perform a medical assessment of the child to include the child's medical needs and selection of placement;

(2) Lead the service planning process for the child's care and serve as a resource for caregivers;

(3) Direct medical training of caregivers, such as gastric tube care;

(4) Review medical records, including compliance with written physician orders;

(5) Contact other professionals, as needed, for the child's care;

(6) Monitor the implementation of the child's service plan; and

(7) Document outcomes for interventions used in the child's care.

§749.743. In what circumstances may a physician or registered nurse delegate nursing tasks to unlicensed nursing personnel?

The physician or registered nurse may delegate nursing tasks to an unlicensed person only if:

(1) The physician or registered nurse delegating the task is directly responsible for the nursing care given to the child;

(2) The agency employing or contracting with the foster parent, caregiver, or other unlicensed nursing personnel develops and follows a protocol, with input from a registered nurse, for the instruction and training of unlicensed personnel performing nursing tasks. The protocol must address:

(A) An established mechanism for identifying those individuals to whom nursing tasks may be designated;

(B) The manner in which the instruction addresses the complexity of the delegated task;

(C) The manner in which the unlicensed person demonstrates the competency of the delegated task; and

(D) The mechanism for re-evaluation of the competency;

(3) The training protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the physician's or registered nurse's professional judgment; and

(4) A licensed physician or registered nurse instructs a foster parent or caregiver, or other unlicensed personnel in performing nursing tasks.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601065

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. CONTRACT STAFF, VOLUNTEERS, AND STUDENT INTERNS

**40 TAC §§749.761, 749.763, 749.765, 749.767, 749.769,
749.771**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.761. What are the requirements for a volunteer?

(a) You must maintain a personnel record for each volunteer, which includes a student intern.

(b) The personnel record must include a statement signed and dated by the volunteer indicating he must immediately report any suspected incident of abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee.

(c) If the volunteer provides short-term services through an agency or an organization, you must be aware of and approve the organization or agency's policies on volunteer short-term services before the volunteer can have contact with children.

§749.763. What are the additional requirements for a volunteer to be able to perform employee or caregiver functions?

(a) A volunteer who performs any function must meet the same requirements as an employee or caregiver who performs that function.

(b) You must maintain records documenting how these requirements are met.

§749.765. What requirements must a contract service provider meet?

(a) A contract service provider who will regularly or frequently be present at your agency or foster homes or who performs any child-placing activities or provides case management or treatment services must:

(1) Meet the same requirements as an employee;

(2) Meet the same requirements as a caregiver, if the provider functions as a caregiver; and

(3) Provide a copy of the contractor's valid and applicable professional license, certification, and/or registration to the agency.

(b) A contract service provider is not a caregiver if the person:

(1) Provides a specific type of service to your agency for a limited number of hours per week or month; or

(2) Works with a particular child.

§749.767. Is a volunteer who is part of another agency or organization subject to my policies and procedures?

If the volunteer is a part of an organization, including another agency, that provides screening, training, and supervision, you do not have to duplicate these services. However, you must determine that the volunteer program's policies and procedures meet the intent of these rules, before the volunteer can have contact with children.

§749.769. Can I use "volunteers" referred for community service through the courts as an alternative to incarceration or as a condition of probation?

No, you may not use these persons in any agency activities. This prohibition applies even if the activities do not involve contact with children in care.

§749.771. Is a family or organization that invites a child in care for an overnight or weekend a "volunteer"?

(a) When a family or organization takes a child who is in care for an overnight or weekend visit, this is not a volunteer activity.

(b) In order for a family or organization to take a child out of care for more than 48 hours, you must get written approval from the parent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601066

Gerry Williams
General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

40 TAC §749.801

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.801. What do certain words and terms mean in this subchapter?

The words and terms used in this subchapter have the following meanings:

- (1) CEU--Continuing education unit.
- (2) CPR--Cardiopulmonary resuscitation.
- (3) Hours--Clock hours.

(4) Instructor led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor and must include an opportunity for the student to timely interact with the instructor to obtain clarifications and information beyond the scope of the training materials, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

(5) Self instructional training--Training that is designed to be used by one individual working alone and at their own pace to com-

plete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601067

Gerry Williams
General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ORIENTATION

40 TAC §749.831, §749.833

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.831. What is the orientation requirement for caregivers and employees?

(a) Prior to beginning job duties or having contact with children in care, each caregiver or employee must have orientation that includes:

(1) An overview of the relevant and applicable rules of this chapter;

(2) Your philosophy, organizational structure, policies, and a description of the services and programs you offer; and

(3) The needs and characteristics of children that you serve.

(b) You must document the completion of the orientation in the appropriate personnel record.

§749.833. Must I provide orientation to a person who was previously a caregiver or an employee at my agency?

(a) You do not have to provide orientation to a person who was a caregiver or employee at your agency during the past 12 months. However, before this person can be the only caregiver for a group of children, you must:

(1) Discuss with the employee any changes in your services or programs that have occurred since the previous employment; and

(2) Ensure the employee has received training during the past 12 months from your agency on preventing, identifying, treating, and reporting child abuse, neglect, and exploitation.

(b) You must document this discussion and the previous training in the person's personnel record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601068

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §§749.861, 749.863, 749.865, 749.867, 749.869

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.861. What are the pre-service experience requirements for caregivers?

(a) For caregivers providing care to children only receiving child-care services and/or programmatic services, there are no pre-service experience requirements.

(b) Before a caregiver can provide care to a child receiving treatment services, you must ensure that the caregiver has the experience to care for the child's treatment need. If a caregiver does not have the necessary experience, your child-placement management staff must prescribe a regimen of specific child-care experience that the caregiver must complete before you place a child with treatment needs in the caregiver's home.

(c) You must document the caregiver's experience and/or prescribed regimen in the home's record.

§749.863. What are the pre-service hourly training requirements for caregivers and employees?

(a) Caregivers and employees must complete the following training hours before the noted timeframe:

Figure: 40 TAC §749.863(a)

(b) You must document the completion of each training requirement in the appropriate personnel record.

§749.865. Can time spent in orientation training count towards pre-service training?

No, the orientation training must be separate from the pre-service hourly training requirement.

§749.867. Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a child-placing agency?

(a) A caregiver is exempt from completing the eight hours of general pre-service training if he has been a caregiver for a residential child-care operation during the past 12 months.

(b) A caregiver or employee is exempt from completing the 16 hours of pre-service training regarding emergency behavior intervention if he:

(1) Has been a caregiver for or employed by a residential child-care operation during the past 12 months;

(2) Has received training during the past 12 months in the types of emergency behavior intervention used at your agency; and

(3) Can demonstrate knowledge and competency of the training material, both in writing and in physical techniques.

(c) You must document the exemption factors in the appropriate personnel record.

§749.869. What are the instructor requirements for providing pre-service training?

(a) A qualified instructor must deliver the pre-service training.

(b) The training must be instructor led.

(c) A licensed physician, a registered nurse, or a pharmacist must provide training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.

(d) To provide training in emergency behavior intervention the:

(1) Instructor must be certified in a recognized method of emergency behavior intervention, or be able to document knowledge of:

(A) The emergency behavior intervention;

(B) The course material;

(C) Training delivery methods and techniques; and

(D) Training evaluation or assessment methods and techniques;

(2) Training must be competency-based and require participants to demonstrate skill and competency at the end of the training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601069

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §§749.881, 749.883, 749.885

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.881. What curriculum components must be included in the general pre-service training?

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, and age-appropriate activities for the children;

(2) The different roles of caregivers;

(3) Measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(4) Strategies and techniques for monitoring and working with these children;

(5) Procedures to follow in emergencies, including fire, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult;

(6) Preventing the spread of communicable diseases; and

(7) The location and use of fire extinguishers and first-aid equipment.

§749.883. Are there additional general pre-service training requirements for a caregiver who will care for children younger than two years old?

Yes. You must ensure that each caregiver providing care for children younger than two years old receives training on:

(1) Recognizing and preventing shaken baby syndrome;

(2) Preventing sudden infant death syndrome; and

(3) Understanding early childhood brain development.

§749.885. Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?

Yes. You must ensure that each caregiver that administers psychotropic medication receives training on:

(1) Identification of psychotropic medications;

(2) Basic pharmacology (the actions and side effects of, and possible adverse reactions to, various psychotropic medications);

(3) Techniques and methods of administering medications;

(4) Who is legally authorized to provide consent for the psychotropic medication; and

(5) Any related policies and procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601070

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.901, §749.903

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

(1) Developing and maintaining an environment that supports positive and constructive behaviors;

(2) The causes of behaviors potentially harmful to children, including aspects of the environment;

(3) Early signs of behaviors that may become dangerous to the child or others;

(4) Strategies and techniques the child can use to avoid harmful behaviors;

(5) Teaching children to use the strategies and techniques of your agency's de-escalation protocols to avoid harmful behavior, and supporting the children's efforts to progress into a state of self-control;

(6) Less restrictive strategies caregivers can use to intervene in potentially harmful behaviors;

(7) Less restrictive strategies caregivers can use to work with oppositional children; and

(8) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

§749.903. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

(a) If you allow the use of emergency behavior intervention, at least 75% of the pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the components listed in §749.901 of this title (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?).

(b) The training does not have to address the use of any type of emergency behavior intervention that your policies do not allow.

(c) The other 25% of the pre-service training curriculum regarding emergency behavior intervention must include the following components:

(1) Different roles and responsibilities of caregivers qualified in emergency behavior intervention versus employees or volunteers who are not qualified in emergency behavior intervention;

(2) Escape and evasion techniques to prevent harm to the child and caregiver without requiring the use of an emergency behavior intervention;

(3) Safe implementation of the restraints and/or seclusion techniques and procedures that are appropriate for the age and weight of children served and permitted by the rules in this chapter and your policies and procedures;

(4) The physiological impact of emergency behavior intervention;

(5) The psychological impact of emergency behavior intervention, such as flashbacks from prior abuse;

(6) How to adequately monitor the child during the administration of an emergency behavior intervention to prevent injury or death;

(7) Monitoring physical signs of distress and obtaining medical assistance;

(8) Health risks for children associated with the use of specific techniques and procedures;

(9) Drawings, photographs, or videos of each personal or mechanical restraint permitted by your policy; and

(10) Strategies for re-integration of children into the environment after the use of emergency behavior intervention, including the debriefing of caregivers and the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601071

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. ANNUAL TRAINING

40 TAC §§749.931, 749.933, 749.935, 749.937, 749.939, 749.941, 749.943, 749.945, 749.947, 749.949

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.931. What are the annual training requirements for caregivers and employees?

Caregivers and employees must complete the following training hours: Figure: 40 TAC §749.931

§749.933. When must an employee or caregiver complete the annual training?

(a) Each person must complete the annual training:

(1) Within 12 months from the date of his employment; and

(2) During each subsequent 12-month period.

(b) You have the option of prorating the person's annual training requirements from the date of employment to the end of the calendar year and then beginning a new 12-month period on January 1st.

§749.935. What types of hours or instruction can be used to complete the annual training requirements?

(a) Annual training may include hours or CEUs earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Self-instructional training, excluding training on emergency behavior intervention, first-aid, and CPR;

(4) Planned learning opportunities provided by child-care associations or Licensing; or

(5) Planned learning opportunities provided by a child-placing agency administrator, professional contract service provider, professional service provider, treatment director, child placement management staff, child placement staff, contractor, or caregiver who meets minimum qualifications in the rules of this chapter.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another child-placing agency, general residential operation, or residential treatment center, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

(2) Annual emergency behavior intervention training;

(3) First-aid and CPR training;

(4) CEUs while maintaining a professional license;

(5) The hours attending college or a professional credentialing or registry program, if the:

(A) Training concerns a topic that is appropriate to the needs of the children that the foster home serves, or is directly related to job duties; and

(B) Documentation requirements of §749.949 of this title (relating to What documentation must I maintain for annual training?) are met;

(6) The hours of pre-service training that the person earns in addition to the required pre-service hours. For example, if you complete 24 hours of pre-service emergency behavior intervention training, you may count eight of these hours toward annual training requirements;

(7) Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No additional credit hours for training curriculum development are permitted for repeated training sessions; and

(8) One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than one-third of the required annual training hours may come from self-instructional training.

§749.937. Does Licensing approve training resources or trainers for annual training hours?

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure the employees receive reliable training relevant to the population of children served, which includes:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.

§749.939. What are the instructor requirements for providing annual training?

The annual training instructors must meet the same requirements in §749.869 of this title (relating to What are the instructor requirements for providing pre-service training?).

§749.941. What areas or topics are appropriate for annual training?

Annual training must be in areas appropriate to the needs of children for whom the caregiver provides care, which include:

(1) Developmental stages of children;

(2) Constructive guidance and discipline of children;

(3) Fostering children's self-esteem;

(4) Positive interaction with children;

(5) Strategies and techniques for working with the population of children served;

(6) Supervision and safety practices in the care of children; and

(7) Preventing the spread of communicable diseases.

§749.943. For a caregiver who will care for children younger than two years old, what annual training is required?

If you permit a caregiver to care for children younger than two years old, his annual training must meet the requirements in §749.883 of this title (relating to Are there additional general pre-service training requirements for a caregiver who will care for children younger than two years old?).

§749.945. For a caregiver that administers psychotropic medication, what annual training is required?

If you permit a caregiver to administer psychotropic medication, his annual training must meet the requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?).

§749.947. What must annual training regarding emergency behavior intervention include?

(a) The annual training regarding emergency behavior intervention must reinforce basic principles covered in pre-service training, see §749.901 of this title (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?) and §749.903 of this title (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?), and develop and refine the caregiver's skills.

(b) You may determine the content of the training based on your evaluation of your emergency behavior intervention programs.

(c) The training may repeat pre-service training components, including training in the proper use and implementation of emergency behavior intervention.

§749.949. What documentation must I maintain for annual training?

(a) You must keep documentation verifying completion of annual training in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) The documentation must include the following information:

(1) The participant's name;

(2) Date of the training;

(3) Title or subject of the training;

(4) The trainer's name and qualifications, or the source of the training for self-instructional training; and

(5) Length of the training in hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601072

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §§749.981, 749.983, 749.985, 749.987, 749.989

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.981. What first-aid and cardiopulmonary resuscitation (CPR) certification must caregivers have?

(a) Before a caregiver can be the only caregiver for a group of children, the caregiver must be certified in:

- (1) First-aid, with rescue breathing and choking; and
- (2) CPR for infants, children, and adults.

(b) A caregiver who is a health professional can use documentation of the following in lieu of these certifications:

- (1) The training to be a health professional includes the knowledge covered in first aid and/or CPR training; and
- (2) The person's employment ensures that these skills are kept current.

§749.983. When must a caregiver renew first-aid and CPR certification?

Each caregiver must complete any new first-aid training or CPR training, as required to maintain a current certification.

§749.985. Who can provide first-aid and CPR certification?

(a) The following may provide first-aid and CPR certification:

- (1) The American Red Cross, American Heart Association, or a training program that has been approved by the local Emergency Medical Services Authority, or is offered through a local hospital; or
- (2) A person with a current certification to provide the training.

(b) A caregiver may not obtain first-aid or CPR certification through self-instructional training.

§749.987. What must the first-aid and CPR training include?

(a) First-aid and CPR training and re-certification must consist of a curriculum that includes both written and hands-on skill-based instruction, practice (for CPR, the practice is through the use of a CPR mannequin), and testing.

(b) CPR training and re-certification must include CPR for infants, children, and adults.

§749.989. What documentation must I maintain for first-aid and CPR certification?

(a) You must document the completion of each training requirement in the appropriate personnel records. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. A photocopy of the original first-aid and/or CPR certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.

(b) The documentation must include the following information:

- (1) The participant's name;
- (2) Date of the training;
- (3) Title or subject of the training;
- (4) The trainer's name and qualifications, or the source of the training for self-instructional training;
- (5) The expiration date of the certification as determined by the organization providing the certification; and
- (6) Length of the training in hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601073
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER G. CHILDREN'S RIGHTS

40 TAC §§749.1001, 749.1003, 749.1005, 749.1007, 749.1009, 749.1011, 749.1013, 749.1015, 749.1017, 749.1019, 749.1021

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1001. How must I protect the rights of children served by my child-placing agency?

(a) You must protect the rights of children while they are in foster care or in adoptive placement prior to the consummation of the adoption.

(b) You must ensure that a caregiver or an adoptive parent, prior to consummation of the adoption, does not restrict or deny a child's rights.

(c) You are responsible for removing a child from a situation where abuse, neglect, or exploitation exists.

§749.1003. What rights does a child in care have?

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) You must adhere to the child's rights, including:

(1) The right to appropriate care and treatment in the least restrictive setting available that can meet the child's needs;

(2) The right to be free from discrimination on the basis of gender, race, religion, national origin, or sexual orientation;

(3) The right to have his physical, emotional, developmental, educational, social and religious needs met;

(4) The right to be free of abuse, neglect, and exploitation as defined in Texas Family Code §261.401;

(5) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment, which includes:

(A) Shaking the child;

(B) Subjecting the child to corporal punishment;

(C) Threatening the child with corporal punishment;

(D) Any unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(E) Denying the child food, sleep, toileting facilities, mail, or family visits as punishment;

(F) Subjecting the child to remarks that belittle or ridicule the child or the child's family; and

(G) Threatening the child with the loss of placement or shelter as punishment;

(6) The right to discipline that is appropriate to the child's age and developmental level;

(7) The right to have restrictions or disciplinary consequences explained to him when the measures are imposed;

(8) The right to a humane environment, including any treatment environment, which provides reasonable protection from harm and appropriate privacy for personal needs;

(9) The right to receive educational services appropriate to the child's age and developmental level;

(10) The right to training in personal care, hygiene, and grooming;

(11) The right to reasonable opportunities to participate in community functions, including recreational and social activities such as Little League teams, Girl Scouts and Boy Scouts, and extracurricular school activities outside of the agency to the extent that is appropriate for the child;

(12) The right to have adequate personal clothing, which must be suitable to his age and size and comparable to the clothing of other children in the community;

(13) The right to have personal possessions at his home and to acquire additional possessions within reasonable limits;

(14) The right to be provided with adequate protective clothing against natural elements such as rain, snow, wind, cold, sun, and insects;

(15) The right to maintain regular contact with his family unless the child's best interest, appropriate professionals, or court necessitates restrictions;

(16) The rights to send and receive uncensored mail, to have telephone conversations, keep a personal journal and to receive visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(17) The right to hire independent mental health professionals, medical professionals, and attorneys at his own expense;

(18) The right to be compensated for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning his room or other assigned chores;

(19) The right to have personal earnings, allowances, possessions, and gifts as the child's personal property;

(20) The right to have services provided in a language or any other means that is understandable to the child at admission, or within a reasonable time after an emergency admission of a child. (If you place a child with foster parents who cannot speak to the child in the child's language, you must provide for an interpreter or other means for the foster parents to communicate with the child in the child's own language, or have at least one person at the home at all times who is able to communicate with the child in the child's own language);

(21) The right to confidential care and treatment;

(22) The right to consent to any publicity or fund raising activity for the agency, including the use of his photograph;

(23) The right to be free of unnecessary or excessive medication;

(24) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning;

(25) The right to participate in the development and review of his service plan within the limits of the child's comprehension and ability to manage the information;

(26) The right to receive emotional, mental health, or chemical dependency treatment separately from adults (other than young adults) who are receiving services;

(27) The right to receive appropriate treatment for physical problems that affect his treatment or safety;

(28) The right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child, if applicable; and

(29) The right to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation.

§749.1005. How must I inform a child and the child's parents of their rights?

(a) Within 24 hours after you accept a child into your agency, you must review the child's rights with the child and a child's parent, unless the parent's consent is not required. You must also provide the child and a child's parent with a written copy of the child's rights.

(b) Child rights must be written in:

(1) Simple, non-technical terms; and

(2) English, unless the person does not understand English. The child's rights must be written in the person's primary language, if possible.

(c) If the person you are informing has a visual or auditory impairment, you must explain the child's rights in a manner that is understandable to the person.

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. You must put the signed copy in the child's record.

§749.1007. What are a child's rights regarding education?

(a) A child must have an appropriate education through attending an educational/vocational program in the most appropriate and least restrictive educational settings, including, but not limited to, attending regular classes conducted in accredited elementary, middle, and secondary schools within the community.

(b) Foster parents and caregivers must:

(1) Attend and participate in school staffings, conferences, and education planning meetings;

(2) Make reasonable efforts to involve the child in extracurricular activities; and

(3) Make reasonable efforts to allow the child to participate in school extracurricular activities to the extent of his interests and abilities and in accordance with his service plan.

§749.1009. What right does a child have regarding contact with a parent?

(a) You must allow contact between a child and his parent whose parental rights have not been terminated according to:

(1) Your policies; and

(2) The provisions of a court order or any visitation agreement.

(b) You must document in the child's service plan:

(1) Plans for contact between the child and a parent; and

(2) Any decision to limit contact with a parent.

(c) Before you can temporarily restrict ongoing contacts or communication between the child and a parent, your child placement management staff must:

(1) Explain the reasons for the restrictions to the child and the child's parent; and

(2) Document the reasons in the child's record.

(d) Restrictions that continue more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:

(1) Explain the reasons for the continued restrictions to the child and the child's parents; and

(2) Document the reasons in the child's record.

(e) If you limit communications or visits with a parent for practical reasons, such as geographical distance or expense, you must discuss the limits with the child and the child's parents. You must document the limits in the child's record.

§749.1011. What right does a child have regarding contact with siblings?

(a) A child must have a reasonable opportunity for sibling visits and contacts in an effort to preserve sibling relationships.

(b) You must address plans for sibling visits and contacts in the child's service plan.

(c) In those circumstances where you recommend contact restrictions because contact is inadvisable for any significant reason, you must include justification in the service plan and service plan reviews and updates.

(d) If barriers to visits exist, such as unavoidable geographic distance and expense issues, the agency must make provisions for sibling contact through letters, telephone calls, or some other means.

§749.1013. What right to privacy does a child have with respect to his communications with others?

(a) Except as determined by child placement management staff or the child's managing conservator, you may not:

(1) Open or read the child's incoming or outgoing mail, including electronic mail; or

(2) Monitor the child's telephone calls.

(b) You must document in the child's record:

(1) Any reason for restricting the child's mail or telephone calls; and

(2) A listing of the mail or telephone calls that you restrict.

(c) You must inform the child and parent about restrictions that you place on the child.

(d) Restrictions that continue for more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

§749.1015. Under what circumstances may I conduct a search?

(a) A child's possessions must be free of unreasonable searches and removal of personal items.

(b) You may search a child, his possessions, or his room only when you have reasonable suspicion:

(1) Of the presence of any contraband;

(2) That the child made suicidal threats or threatened to hurt himself or others; or

(3) That the child or children was involved in theft.

(c) Only a caregiver may conduct searches that involve the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.

(d) If a search of a child who is five years old or younger involves the removal of clothing (other than outer clothing), another adult must witness the search.

(e) If a search of a child who is over the age of five involves the removal of clothing (other than outer clothing), an adult of the same gender must witness the search.

(f) The caregiver must ensure that other children do not witness a search that involves the removal of clothing, other than outer clothing.

§749.1017. May a caregiver conduct a body cavity search of a child in care?

With the exception of a child's mouth, a caregiver may not conduct a body cavity search of a child in care.

§749.1019. What must a caregiver document regarding a search?

A caregiver must document the following in the child's record when conducting a search if it results in the removal of personal items or clothing worn by the child:

- (1) The date of the search;
- (2) The name of the child and any other child involved;
- (3) Reason for the search;
- (4) A description of what was searched;
- (5) The articles of clothing removed, if applicable;
- (6) The name of the person conducting the search;
- (7) The name of the witness, if applicable;
- (8) The results of the search; and
- (9) The resolution of the issue with the child or children

involved.

§749.1021. What techniques am I prohibited from using on a child?

You may not use any of the following techniques on a child:

- (1) Chemical restraints, mechanical restraints, and seclusion. For more information on emergency behavior intervention, see Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention);
- (2) Aversive conditioning, which includes, but is not limited to, any technique designed to or likely to cause a child physical pain, the application of startling stimuli, and the release of noxious stimuli or toxic sprays, mists, or substances in proximity to the child's face;
- (3) Pressure points;
- (4) Rebirthing therapy; and
- (5) Hug and/or holding therapy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601074

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT DIVISION 1. ADMISSIONS

40 TAC §§749.1101, 749.1103, 749.1105, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1101. What children may I admit?

(a) You may only admit children who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must apply for an amended permit with us. You can only accept children:

- (1) Whose age and gender are specified on your permit; and
- (2) Needing the services that are specified on your permit.

(b) Each placement must meet the child's physical, medical, recreational, educational, and emotional needs as identified in the child's admission assessment.

§749.1103. After a child in my care turns 18 years old, may the person remain in my care?

(a) A young adult may remain in your care in order to:

- (1) Transition to independence;
- (2) Complete the school year;
- (3) Complete your program; or
- (4) Stay with a minor sibling.

(b) A young adult who turns 18 in your care may remain in your care indefinitely if the person:

- (1) Continues to need the same level of care; and
- (2) Is unlikely to physically and/or intellectually progress over time.

§749.1105. May I admit a young adult into care who is moving from another residential child-care operation?

You may admit a young adult into your care from another residential child-care operation if the reason for admittance is consistent with a condition listed in §749.1103 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?).

§749.1107. What must I document in the child's record at the time of admission?

(a) You must document the following in the child's record at the time of admission:

- (1) The child's name, gender, race, religion, date of birth, and birthplace;
- (2) Court orders establishing who is the managing conservator for the child, if applicable;
- (3) The name, address, and telephone number of the managing conservator(s), the primary caregivers for the child, and any other individual who has the legal authority to consent to the child's medical care;

- (4) The date and time of admission;
- (5) Medication the child is taking;

(6) The child's immunization record;
(7) Allergies, such as food, medication, sting, and skin allergies;

(8) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving; and

(9) A copy of the placement agreement, if applicable.

(b) For children with primary medical needs, you must also document the medical needs assessed at intake.

(c) For emergency admissions, you must meet the requirements in Division 4 of this subchapter (relating to Emergency Admission).

§749.1109. What is a placement agreement?

A placement agreement is your agreement with a child's parent that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

§749.1111. What orientation must I provide a child at admission?

(a) You must provide orientation to each newly admitted child who is not an infant or a toddler. You must gear orientation to the intellectual level of the child.

(b) For a child functioning at a school age level, orientation must include information about your policies on the following:

(1) Visitation, including family visitation and overnight visitation;

(2) Mail;

(3) Telephone calls;

(4) Gifts;

(5) Personal possessions, including any limits placed on the possessions the child may or may not have;

(6) Emergency behavior intervention, including your agency's policies and practices on the use of personal restraint;

(7) Discipline;

(8) The religious program and practices;

(9) The educational program;

(10) Trips away from the home;

(11) Program expectations and rules; and

(12) Grievance procedures.

(c) For a child functioning above toddler age and below school age, orientation must include as many of the items in subsection (b) of this section as possible.

(d) You must document in the child's record when the orientation occurred, any item that the orientation did not include, and the reason that the orientation did not include that item.

§749.1113. What information must I share with the parent at the time of placement?

(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.

(b) At admission, you must review and provide written materials to the parent placing the child that explain:

(1) Information about the policies that you would present a child during orientation;

(2) Your policies regarding the:

(A) Use of volunteers or sponsoring families; and

(B) Type and frequency of notifications made to parents; and

(3) The parent's right to:

(A) Refuse to consent to the child's participation in research programs;

(B) Give written consent before you can involve the child in any publicity and/or fund raising activity for your agency; and

(C) Withdraw consent for services at any time.

§749.1115. What information must I provide caregivers when I admit a child?

(a) By the day you admit the child for care, you must provide the caregivers responsible for the child's care with information about the child's immediate needs.

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601076

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADMISSION ASSESSMENT

40 TAC §§749.1131, 749.1133, 749.1135, 749.1137

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1131. When must I complete the admission assessment?

You must complete the admission assessment when you admit the child for care. For an emergency admission assessment, see §749.1187 of this title (relating to For an emergency admission, when must I complete all of the requirements for an admission assessment?).

§749.1133. What information must an admission assessment include?

(a) An admission assessment must provide an initial evaluation of the appropriate placement for a child, ensure that you obtain the information necessary for you to facilitate service planning, and must include the following information:

- (1) The child's legal status;
- (2) A description of the circumstances that led to the child's referral for substitute care;
- (3) The child's social history, including information about past and existing relationships and the quality of the relationships among the child and the child's birth parents, siblings, and extended family members;
- (4) A description of the child's home environment and family functioning;
- (5) A description of the child's behavior, including appropriate and maladaptive behavior;
- (6) The child's skills and special interests;
- (7) Any history of physical, sexual, or emotional abuse or neglect;
- (8) Medical, health, and dental history, including:
 - (A) Current health status;
 - (B) Birth history;
 - (C) Neonatal history; and
 - (D) Available results of any medical and dental examinations;
- (9) The child's mental health and substance abuse history, including available results of any psychological or psychiatric examination;
- (10) The child's developmental history and current level of functioning;
- (11) The child's school history, including current educational level, the names of previous schools attended and the dates the schools were attended, grades earned, special achievements, and any school problems;
- (12) The child's history of any other placements outside the child's home, including the admission and discharge dates and reasons for placement;
- (13) The child's criminal history, if applicable;
- (14) Documentation indicating efforts made to obtain any of the identifying information in paragraphs (1)-(13) of this subsection, if any information is not obtainable;
- (15) The services you plan to provide to the child;
- (16) Immediate and long-range goals of placement;
- (17) The parent's expectations for placement, duration of the placement, and family involvement;
- (18) The child's understanding of the placement;

(19) Recommendations for any further assessment services and testing;

(20) A recommended behavior management plan;

(21) A determination of whether you can meet the needs of the child based on an evaluation of the child's special strengths and needs in the following areas:

(A) Physical, including medical and dental health;

(B) Family relationships and family functioning, including parenting if applicable;

(C) Social and recreational;

(D) Educational; and

(E) Emotional/psychological; and

(22) A rationale for the appropriateness of the admission.

(b) You must request in writing materials from the child's current or most recent placement, such as the admission assessment, professional assessments, and the discharge summary. You must consider information from these materials when you complete your admission assessment if they are made available to you.

§749.1135. What are the additional admission requirements when I admit a child for treatment services?

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §749.1135

§749.1137. What if I cannot obtain the required information for an admission assessment?

(a) You must make diligent efforts to obtain all required information.

(b) If you and the child's managing conservator determine that attempting to get information at the time of placement would not be in the child's best interests, you may postpone attempting to acquire the information.

(c) In the child's admission assessment, you must document why a:

(1) Particular piece of information is unavailable; or

(2) Delay obtaining a piece of information is necessary, including efforts made to obtain the information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601077

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. REQUIRED ADMISSION INFORMATION

40 TAC §§749.1151, 749.1153, 749.1155

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1151. What are the medical requirements when I admit a child into care?

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission, unless you have documentation that the child has had a medical examination within the past year.

(b) If you admit a child with primary medical needs, you must provide the child with a medical examination by a health-care professional within seven days before or three days after admission.

(c) If a child admitted shows symptoms of abuse or illness, a health-care professional must examine the child immediately.

(d) The reports and findings of any medical examination must be signed and dated by the health-care professional who performed the examination and must be documented in the child's record.

§749.1153. What are the dental requirements when I admit a child into care?

(a) If the child is younger than three years old and a physician recommends a dental examination, then you must ensure that a dentist examines the child.

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year.

(c) The report and findings of the dental examination must be signed and dated by the dentist and must be documented in the child's record.

§749.1155. What must I document when I re-admit a child for care?

For re-admission, you must complete the admission documentation as if the child was never in your care; or for children that were discharged from your agency within the last 12 months, you may update the previous admission documentation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601078

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

DIVISION 4. EMERGENCY ADMISSION

40 TAC §§749.1181, 749.1183, 749.1185, 749.1187, 749.1189

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1181. For which of my programs may I accept emergency admissions?

You may accept emergency admissions in all of your programs with the exception of a transitional living program.

§749.1183. What constitutes an emergency admission to my child-placing agency?

You may admit a child on an emergency basis if the child:

(1) Is being removed from a situation involving alleged abuse or neglect;

(2) Is an alleged perpetrator of abuse and cannot be served in the child's current placement due to his perpetrating behaviors;

(3) Displays behavior that is an immediate danger to himself or to others and cannot function or be served in his current setting;

(4) Is abandoned and the child's identity cannot be immediately determined after exercising reasonable diligence. Efforts made to obtain information on the child's identity must be documented in the child's record;

(5) Is removed from his home or placement, and there is an immediate need to find a residence for the child; or

(6) Is released to your authorized child-placing agency by a law enforcement or juvenile probation officer.

§749.1185. May I take possession of a child from a law enforcement or juvenile probation officer?

You may take possession of a child from a law enforcement or juvenile probation officer only if you meet the requirements of Division 7, Subchapter H of Chapter 745 of this title (relating to Taking Possession of a Child Through Law Enforcement or a Juvenile Probation Officer).

§749.1187. For an emergency admission, when must I complete all of the requirements for an admission assessment?

(a) For an emergency admission, you must complete all of the requirements (see Division 1 of this subchapter (relating to Admissions)) for an admission assessment within 40 days from the date of the child's admission.

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission unless the child has received the required psychological, psychiatric, psychometric, or physician's evaluation that is required by §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?).

and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

§749.1189. At the time of an emergency admission, what information must I document in the record of a child that I admit?

At the time of the emergency admission:

(1) You must document in the child's record a brief description of the circumstances necessitating the emergency admission; and

(2) For the purpose of providing treatment services, you must also obtain and document the following in the child's record:

(A) A brief description of the child's history;

(B) The child's current behavior; and

(C) Your evaluation of how the placement will meet the child's needs and best interests.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601079

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. FOSTER CARE PLACEMENT

40 TAC §§749.1251, 749.1253, 749.1255

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1251. What are the requirements for pre-placement visits for a child?

(a) A child over six months of age must visit the foster home at least once before placement.

(b) There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed.

(c) You must document pre-placement visits in the child's record.

(d) Pre-placement visits are not required for emergency admissions.

§749.1253. What must staff do to prepare a child for a placement?

(a) The child-placement staff must discuss with the child the circumstances that make the placement necessary, as appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to or at the time of the placement of a child.

(b) You must document into the child's record:

(1) That the discussion occurred; and

(2) The child's understanding of and response to the discussions and the placement.

§749.1255. What information from an admission assessment must I share with the caregivers responsible for the child's care?

(a) In a non-emergency placement, you must share all information from the admission assessment with the foster parents or caregiver responsible for the child's care prior to placement.

(b) In an emergency placement, you must share with the foster parents or caregiver responsible for the child's care:

(1) At the time of placement, all available information relating to the child's needs and your plans for care and management; and

(2) Within 10 days of completing the admission assessment, all information from the admission assessment.

(c) You must document the following in the child's record:

(1) The information you share with the caregiver;

(2) Any information you do not share and the reason why you did not share the information; and

(3) How the placement is capable of meeting the child's needs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601080

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. SUBSEQUENT PLACEMENT

40 TAC §749.1281

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.1281. What are the requirements when I move a child from one foster home to another?

(a) If the move is not an emergency, child placement management staff must:

(1) Review and approve the move before you move the child to the new placement;

(2) Document the review and approval in the child's record, including signature and date; and

(3) Comply with the pre-placement requirements in §749.1251 of this title (relating to What are the requirements for pre-placement visits for a child?).

(b) If the move is an emergency, child placement staff must:

(1) Give verbal approval before the move; and

(2) Document the verbal approval in the child's record within 10 days of the placement. Documentation must be signed and dated and include the date verbal approval was given and circumstances of the emergency placement.

(c) For all moves, child-placing staff must prepare a child according to §749.1253 of this title (relating to What must staff do to prepare a child for a placement?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601081

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE DIVISION 1. SERVICE PLANS

**40 TAC §§749.1301, 749.1303, 749.1305, 749.1307,
749.1309, 749.1311, 749.1313, 749.1315, 749.1317, 749.1319,
749.1321, 749.1323**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1301. What are the requirements for a preliminary service plan?

(a) You must complete a preliminary service plan that addresses the immediate needs of the child receiving services within 72 hours of the child's admission.

(b) In addition, for a child receiving treatment services the preliminary service plan must include:

(1) A description of the child's immediate treatment and care needs;

(2) A description of the child's immediate, educational, medical, and dental needs, including possible side effects of medications or treatment prescribed to the child;

(3) A description of how you will meet the child's needs, including follow-up actions of possible side effects of medication or treatment provided to the child;

(4) The identification of any issues or concerns the child may have that could escalate a child's behavior. Identification of a child's issues or concerns must serve to avoid the use of unnecessary emergency behavior interventions with the child. Child concerns may include issues with food, eye contact, physical touch, personal property, or certain topics;

(5) A designation of who will be responsible for meeting each of the child's needs; and

(6) If the bedroom of the caregiver(s) is on a different level than a foster child's bedroom, a description and approval of the foster homes plans on how the foster child will be supervised, as required in §749.1303 of this title (relating to What must I do if the caregivers' bedrooms are located on a different level than foster children's bedrooms?).

(c) The plan must be compatible with the information included in the child's admission assessment.

(d) You must document the plan in the child's record.

(e) You must inform each professional service provider and caregiver working with a child about the child's preliminary service plan.

(f) You must implement and follow the preliminary service plan.

§749.1303. What must I do if the caregivers' bedrooms are located on a different level than foster children's bedrooms?

(a) If a caregiver's bedroom is not located on the same level as a foster child's bedroom and the foster child is receiving treatment services, then your child placement management staff must review and approve the caregiver's plan for supervision, protection, and safety of the children by signing and dating the plan. The plan must be based on the specific needs of children in the home.

(b) Your child placement management team must update its review and approval of the plan each time you place a new child in the home.

§749.1305. Who must be involved in developing the preliminary service plan?

The child placement staff must develop, sign, and date the preliminary service plan.

§749.1307. When must I complete an initial service plan?

You must complete the initial service plan within 40 days after you admit the child.

§749.1309. What must a child's initial service plan include?

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment. The service plan-

ning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a scheduled date for review and development and a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:
Figure: 40 TAC §749.1309(b)

§749.1311. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

- (1) A current caregiver;
- (2) Any professional service provider who provides direct services to the child; and
- (3) If you are providing treatment services to the child, at least two of the following professionals:

- (A) A licensed professional counselor;
- (B) A psychologist;
- (C) A psychiatrist or physician;
- (D) A licensed registered nurse;
- (E) A licensed masters level social worker;
- (F) A licensed or registered occupational therapist; or
- (G) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(b) The child, as appropriate, and the parents must be invited to the meeting to develop the service plan.

§749.1313. When must I inform the child's parent(s) of an initial service plan meeting?

(a) You must give the child's parent(s) at least two weeks advance notice of the review.

(b) The child's record must include the notice, the mailed copy or summary, and any responses from the parents.

§749.1315. Must a professional service provider or a professional who must participate in a child's service plan be an employee of my agency?

No. You may employ or contract with a professional service provider or any other professional who participates in a child's service plan.

§749.1317. What roles do professional service providers have in service planning?

The roles of professional service providers in service planning include:
Figure: 40 TAC §749.1317

§749.1319. What must I document regarding a professional service provider's participation in the development of an initial service plan?

- (a) You must document the professional service provider's:
- (1) Name;
 - (2) Date of participation; and
 - (3) Comments and input.

(b) The professional service provider must sign and date the document. If the provider disagrees with any portion of the plan, the provider must document the issue(s) of contention before signing it.

(c) The plan will not be effective until the documentation requirements set forth in this rule are complete.

§749.1321. With whom do I share the initial service plan?

(a) You must give a copy or summary of the initial service plan to the:

- (1) Child, when appropriate; and
- (2) Child's parents.

(b) If you do not share the service plan or summary with the child, you must document your justification for not sharing the plan in the child's record.

(c) You must inform the child's caregivers of the plan. It also must be explained and made available to caregivers.

§749.1323. When must I implement a service plan?

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than 10 days after the date of the service-planning meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601082

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SERVICE PLAN REVIEW AND UPDATES

40 TAC §§749.1331, 749.1333, 749.1335, 749.1337, 749.1339

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1331. How often must I review and update a service plan?

Except for when the child's placement within your agency changes because of a change in the child's needs, you must review and update the service plan as follows:

Figure: 40 TAC §749.1331

§749.1333. How does a transfer within my agency affect the timing of the review of the child's service plan?

(a) You must review a child's service plan whenever the child's placement within your agency changes because of a change in the child's needs.

(b) If the child's placement in your agency changes for another reason:

(1) The child's service planning team must approve the decision not to review the plan; and

(2) You must document the decision not to review the plan.

§749.1335. How do I review and update a service plan?

To review and update a service plan, you must:

(1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports;

(2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees;

(3) Document any achieved or changed objectives;

(4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;

(5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;

(6) Document visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;

(7) Update the estimated length-of-stay and discharge plans, if changed;

(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:

(A) Continue the placement;

(B) Continue the placement as child-care services;

(C) Transfer the child to a less restrictive setting; or

(D) Refer the child to an inpatient hospital;

(9) Document in the child's record the review and update of the plan;

(10) Evaluate the use and effectiveness of emergency behavior intervention techniques if used during the child's progress reporting period. If applicable, this evaluation must focus on:

(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;

(B) Strategies to reduce the need for emergency behavior interventions overall; and

(C) Specific strategies to reduce the need for use of personal and mechanical restraints, emergency medication, and/or seclusion, where applicable; and

(11) Document the names of the persons participating in the review and update.

§749.1337. Are the participation, implementation, and documentation requirements for a service plan review and update the same as for an initial service plan?

Yes, the same requirements found in Division 1 of this subchapter (relating to Service Plans) apply to a service plan review and update.

§749.1339. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for mental retardation?

(a) Each child's intellectual functioning must be re-evaluated at least annually by a psychologist qualified to provide psychological testing until the child is 10 years old and every two years thereafter; or

(b) A psychologist must determine the frequency for a specific child's intellectual functioning to be re-evaluated. This determination, including justification for the time frame, must be documented in the child's record annually by the service planning team.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601083

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. DISCHARGE AND TRANSFER PLANNING

40 TAC §§749.1361, 749.1363, 749.1365, 749.1367, 749.1369, 749.1371, 749.1373, 749.1375, 749.1377, 749.1379

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1361. What does "the transfer of a child in care" mean?

The transfer of a child in care refers to when you move a child in care from one agency placement to another.

§749.1363. Who must plan a child's non-emergency discharge or transfer?

(a) You must involve the following persons in planning the child's non-emergency discharge or transfer:

(1) At least one of the child's regular caregivers;

(2) Any professional service provider involved in service planning;

(3) The child; and

(4) The child's parent(s), if agreeable.

(b) If you are unable to plan the transfer or discharge with the persons required in subsection (a) of this section, you must document in

the child's record the reason why. For example, an emergency transfer or discharge was necessary or the child met the requirements to consent for emergency care services and decided not to include his parents in planning for the child's transfer or discharge.

(c) If a child in your care is not receiving treatment services, you must inform him of his non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your administrator has clear justification for not giving him such notice. Your administrator, who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(d) If a child in your care is receiving treatment services, you must inform him of his non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has a justification for not giving him such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

§749.1365. May a foster home release a child to any person without my consent?

No, the foster home must not release a child to any person without your consent.

§749.1367. To whom can I discharge a child in a non-emergency situation?

You must discharge a child to the child's parent or to anyone with written authorization from the parent or a person authorized by the court to assume custody of the child.

§749.1369. How do I discharge or transfer a child who is an immediate danger to himself or others?

The child's caregiver(s) or the child placement staff must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

§749.1371. What must I document in the child's record at the time of a planned discharge or transfer?

(a) Your documentation of a planned discharge or transfer is called a "discharge or transfer summary" and must include:

(1) A discharge or transfer summary showing services provided to the child, accomplishments, assessment of remaining needs, and recommendations about the services to meet those needs;

(2) The date and circumstances of the discharge or transfer;

(3) Discharge or transfer medications and/or prescriptions for medications;

(4) Support resources for the child, including telephone numbers and addresses;

(5) Aftercare plans and recommendations, including medical, psychiatric, psychological, dental, educational, and social appointments;

(6) Date and time the child was informed of his discharge or transfer; and

(7) For discharges, the name, address, and relationship of the person to whom you discharge the child, unless the child legally consents to his discharge. If the child legally consents to his discharge and does not want to involve the child's parent(s), you must document this in the child's record.

(b) The documentation requirements can be met by providing the original or copies of the child's record containing the information in subsection (a) of this section to the receiving program before or at the time of the child's transfer. However, the date the information was provided, and the name of the person(s) who provided and received the information must also be documented in the child's record.

§749.1373. When I discharge a child to another agency or residential child care operation, what information must I provide them?

(a) On or before the child's discharge, you must attempt to obtain legal consent to release the discharge summary according to subsections (b) and (c) of this section. If consent is not obtained, your attempt to obtain consent must be documented in the child's record.

(b) If legal consent is granted when you discharge a child to another operation, you must provide the following information in writing to that operation:

(1) The child's background information, including progress notes for the past 60 days if applicable;

(2) Any unresolved incidents or investigations involving the child, if applicable;

(3) Assessments and/or evaluations that you have performed for the child, including the child's admission assessment, diagnostic assessment, educational assessment, neurological assessment, and psychiatric or psychological evaluation;

(4) The child's service plans while in your care for the past 12 months;

(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed; and

(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care.

(c) Within 30 days from the date of the child's discharge, you must provide the receiving operation with the child's discharge summary if legal consent is granted.

§749.1375. To whom do I provide a copy of the discharge summary when I discharge a child to his home?

You must send a copy of the discharge summary to the child's parent within 30 days after you discharge the child.

§749.1377. What constitutes an emergency transfer or discharge?

An emergency transfer or discharge occurs when:

(1) The parent withdraws a child unexpectedly from care, including withdrawals with less than 10 days notice;

(2) There is a medical emergency requiring inpatient care;

(3) The child is absent from the home and cannot be located; or

(4) There is an immediate danger to the child or others and the child remains in the agency or program.

§749.1379. What must I document in the child's record at the time of an emergency discharge or transfer?

At the time of an emergency discharge or transfer, you must document the following in the child's record:

(1) The circumstances necessitating the emergency transfer or discharge;

(2) The date of transfer or discharge; and

(3) The name, address, and relationship of the person to whom you transfer or discharge the child, where applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601084

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL DIVISION 1. MEDICAL AND DENTAL CARE

40 TAC §§749.1401, 749.1403, 749.1405, 749.1407, 749.1409, 749.1411, 749.1413, 749.1415, 749.1417, 749.1419, 749.1421, 749.1423, 749.1425, 749.1427, 749.1429, 749.1431, 749.1433, 749.1435

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1401. What general medical requirements must my agency meet?

(a) A child in your care must receive medical care:

(1) Initially, according to the requirements in §749.1151 of this title (relating to What are the medical requirements when I admit a child into care?);

(2) As needed for injury, illness, and pain; and

(3) As needed for ongoing maintenance of medical health.

(b) The child's record must include a written record of each medical examination specifying:

(1) The date of the examination;

(2) The procedures completed;

(3) The follow-up treatment recommended and any appointments scheduled;

(4) The child's refusal to accept medical treatment, if applicable;

(5) The results of the medical examination that is signed and dated by the health-care professional who performed the examination; and

(6) If the medical examination is a result of an injury or medical incident, the documentation of the circumstances surrounding the incident, including the date and time of the incident.

(c) You must obtain follow-up medical treatment as recommended by the health-care professional.

§749.1403. Who determines the need and frequency for ongoing maintenance of medical care and treatment for a child?

A health-care professional determines the need and frequency for ongoing maintenance of medical care and treatment for a child.

§749.1405. Who must perform medical care examinations and provide medical treatment for a child?

A health-care professional licensed in the state of Texas to practice medicine in his discipline must perform medical care examinations and provide medical treatment for a child.

§749.1407. What information must I provide to caregivers about a child's medical needs?

You must inform the child's caregivers of any special medical needs that the child has.

§749.1409. What general dental requirements must my agency meet?

(a) A children in your care must receive dental care:

(1) Initially, according to the requirements in §749.1153 of this title (relating to What are the dental requirements when I admit a child into care?);

(2) At as early an age as necessary;

(3) As needed for relief of pain and infections; and

(4) As needed for ongoing maintenance of dental health.

(b) The child's record must include a written record of each dental examination specifying the:

(1) Date of the examination;

(2) Procedures completed;

(3) Follow-up treatment recommended and any appointments scheduled;

(4) The child's refusal to accept medical treatment, if applicable; and

(5) The results of the dental examination that is signed and dated by the health-care professional who performed the examination.

(c) You must obtain follow-up dental work indicated by the examination, such as treatment of cavities and cleaning.

§749.1411. Who must determine the frequency and need for ongoing maintenance of dental health for a child?

A licensed dentist must determine the frequency and need for ongoing maintenance of dental health for a child. You must comply with dentist recommendations for examinations and treatment for each child.

§749.1413. Who must perform dental examinations and provide dental treatment?

A health-care professional licensed in the state of Texas to practice dentistry must provide dental care.

§749.1415. What health precautions must I take if a child, caregiver, or someone else in my agency has a communicable disease?

(a) You must notify the Department of State Health Services (DSHS) after you become aware that a child in your care or employee, caregiver, student intern, or volunteer has contacted a communicable disease that the law requires you to report to the DSHS as specified in 25 TAC 97, Subchapter A (relating to Control of Communicable Diseases).

(b) If a child has symptoms of a communicable disease that is reportable to the DSHS, you must:

(1) Follow the treating physician's orders, which may include separating the child from other children in care;

(2) Notify the child's parent;

(3) Consult a health-care professional about the child's treatment; and

(4) Sanitize all items used by the sick child before another person uses one of them.

(c) If a health-care professional diagnoses a child with a communicable disease that may be spread through casual contact, a health-care professional must authorize the child's participation in routine activity at the foster home. The authorization must:

(1) Be written and in the child's record;

(2) Include a statement that the child will not pose a serious threat to the health of the other children; and

(3) Include any specific instructions and precautions to be taken for the protection of the children.

(d) If an employee, caregiver, student intern, or volunteer has a communicable disease that may be spread through casual contact, you must obtain written authorization from a health-care professional for the person to work with children and/or to be present at the agency. The written authorization must include a statement that the adult will not pose a serious threat to the health of the children.

(e) You must follow any written instructions and precautions specified by a health-care professional.

§749.1417. Who must have a tuberculosis (TB) examination?

(a) Requirements for tuberculosis screening and testing vary across the state. If you are unsure of the requirements for your area, contact the TB manager at the Department of State Health Services (DSHS) regional office nearest you.

(b) If your regional DSHS office or local health authority requires tuberculosis testing for children in your agency, then you must have a licensed health-care professional's statement verifying that each child in your care is free of active tuberculosis.

(c) Documentation of a TB screening is not required to be on file, if the TB testing is not required.

§749.1419. What must I do if someone in my agency has a positive tuberculosis test result?

When testing is required and the result is positive, you must:

(1) Follow through with all recommendations for further testing; and

(2) Carry out and document all public health precautions and treatment in accordance with the requirements of the regional Department of State Health Services or local health authority.

§749.1421. What immunizations must a child in my care have?

(a) Each child that you admit must meet and continue to meet applicable immunization requirements specified by §42.043 of the Human Resources Code and the Department of State Health Services.

(b) You must maintain current immunizations records for each child in your care.

(c) Unless except, all immunizations required for the child's age must:

(1) Be completed by the date of admission; or

(2) Begin within 30 days after admission.

§749.1423. What are the exemptions from immunization requirements?

Exemptions for immunization requirements must meet criteria specified by:

(1) §42.043 of the Human Resources Code; or

(2) The Department of State Health Services rules in 25 TAC §97.62 (relating to Exclusions from Compliance).

§749.1425. What documentation is acceptable for an immunization record?

(a) A immunization record must include:

(1) The child's name and birth date;

(2) The number of doses and vaccine type;

(3) The month, day, and year the child received each vaccination; and

(4) A signature or rubber stamp signature from the health-care professional who administered the vaccine.

(b) Documentation of an immunization record on file at your agency may be:

(1) The original record;

(2) A photocopy;

(3) An official immunization record generated from a state or local health authority, such as a registry; or

(4) A record received from school officials, including a record from another state.

§749.1427. Must children in my care have a vision and hearing screening?

(a) You must ensure that each child you admit is screened for possible vision and hearing problems that meet the requirements of the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36. If problems are detected, the child must have a professional vision and hearing examination.

(b) For each child required to be screened, you must keep one of the following in each child's record:

(1) The individual vision and hearing screening results;

(2) A signed statement from the child's parent that the child's screening records are current and on file at the program or school the child attends away from the agency. The statement must be dated and include the name, address, and telephone number of the program or school; or

(3) An affidavit from the child's parent stating that the vision or hearing screening and/or examination conflicts with the tenets or practices of a church or religious denomination of the parents.

§749.1429. What must I do if a child in my care is identified as needing a diagnostic vision or hearing examination?

You must:

(1) Schedule the child for professional examination and needed health services;

(2) Ensure the professional and medical recommendations are carried out; and

(3) Convey the information concerning the child's visual and/or hearing difficulty to the educational and agency caregivers, so the recommended adjustments can be made in programs.

§749.1431. What special equipment must I provide for a child with a physical disability?

When recommended by a physician or other health-care professional, you must ensure that a child with a physical disability has any special equipment recommended that can be reasonably obtained.

§749.1433. How often must the physician review a child's primary medical needs?

(a) A licensed physician must review a child's primary medical needs at least every 90 days and whenever a medical or related problem occurs.

(b) The review must address:

(1) Whether the child can continue to be cared for appropriately in the foster home; and

(2) Any new or changed orders regarding the items outlined in §749.1135 of this title (relating to What are the additional requirements when I admit a child for treatment services?).

(c) Documentation of each physician review must be filed in the child's record.

§749.1435. What are the requirements for using a nasogastric tube?

(a) Only a licensed nurse or a caregiver instructed by a licensed nurse may insert a nasogastric tube according to a physician's written orders.

(b) The caregiver must document each insertion in the child's record. The documentation for each insertion must include the:

(1) Signature of the nurse or caregiver who inserted the tube; and

(2) Date of the insertion.

(c) The caregiver must follow the physician's written orders concerning the tube.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601085

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADMINISTRATION OF MEDICATION

40 TAC §§749.1461, 749.1463, 749.1465, 749.1467, 749.1469

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1461. What consent must I obtain to administer medications?

(a) You must obtain a general written consent to administer routine, preventive, and emergency medications.

(b) You must obtain the written, signed, and dated consent from the person legally authorized to give medical consent before administering the medication.

§749.1463. What safety requirements must caregivers meet when handling medications?

(a) To the best of their knowledge, caregivers must inform the person legally authorized to give medical consent of the benefits, risks, and side effects of all medication and treatment procedures used and the medical consequences of refusing them, and/or provide the name and telephone number of the prescribing health-care professional for more information.

(b) Caregivers must:

(1) Be informed about possible side effects of medications administered to the child;

(2) Ensure a person trained in and authorized to administer medication administers medication to a child in care unless the child is on a self-medication program;

(3) Administer medications according to the instructions on the label or according to a prescribing health-care professional's subsequent signed orders (See §749.1465 of this title (relating to May a caregiver accept verbal instructions on the administration of medication?));

(4) Administer each child's medication immediately after preparation;

(5) Ensure the child has taken the medication as prescribed;

(6) Maintain any documentation provided by the health-care professional on the administration of current medication;

(7) Not physically force a child to take prescription medication;

(8) Ensure that your employees do not provide any medication or treatment to a child except on written orders of a health-care professional;

(9) Not borrow or administer medication to a child that is prescribed to another person;

(10) Store medication in the original container as received from the pharmacy or health-care professional unless you have an additional container with the same pharmacist's label and instructions; and

(11) Not administer prescription medication to more than one child from the same container. Only the child for whom the prescription medication was prescribed may use the medication.

§749.1465. May a caregiver accept verbal instructions on the administration of medication?

Assuming the caregiver has obtained written consent according to §749.1461 of this title (relating to What consent must I obtain to administer medications?), a licensed health-care professional may provide verbal instructions on the administration of medication. However, the health-care professional must write and sign orders within 72 hours of the verbal order.

§749.1467. What is over-the-counter medication?

Over-the-counter medication is a drug that does not require a prescription from a health-care professional for purchase. A written prescription for an over-the-counter drug does not make the drug a prescription drug. However, a prescribed over-the-counter drug must be administered and documented per the physician prescription.

§749.1469. What are the requirements for administering over-the-counter medication and non-prescription vitamins?

(a) You must follow the label and ensure the over-the-counter medication is not contraindicated with any other medication prescribed to the child or the child's medical conditions.

(b) You may give an over-the-counter medication or non-prescription vitamins to more than one child from one container.

(c) Documentation of approved over-the-counter medication and non-prescription vitamins for each child must be maintained in the medication record, which must be incorporated into the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601086

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. SELF-ADMINISTRATION OF MEDICATION

40 TAC §749.1501, §749.1503

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1501. What are the requirements for a self-medication program?

For a child to be on a self-medication program:

(1) The child's health-care professional must give written authorization for the child to be on the program;

(2) The child's service plan must include the self-medication program and any requirements for caregiver supervision; and

(3) You must notify the parent and the person legally authorized to give medical consent that the child is on the program.

§749.1503. Who must record a medication dosage if the child is on a self-medication program?

When a child who is on a self-medication program takes a dosage of the medication, the child may:

(1) Record the dosage if you have a system for reviewing the child's medication each day; or

(2) Report the medication to a caregiver, who must then do the actual recording.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601087

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. MEDICATION STORAGE AND DESTRUCTION

40 TAC §749.1521, §749.1523

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1521. What medication storage requirements must a foster home meet?

A foster home must:

(1) Store medication in a locked container that requires a key to unlock it;

(2) Keep medication inaccessible other than to employees responsible for stored medication;

(3) Ensure the medication storage area has a separate locked container where medications "for external use only" are stored separately from other medications;

(4) Store medication covered by Section II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the room where medications are stored;

(5) Make provisions for securely storing medication that requires refrigeration;

(6) Keep medication storage area(s) clean and orderly;

(7) Remove discontinued medication from the medication area within 90 days of the discontinuance date and properly destroy it;

(8) Remove medication on or before the expiration date and properly destroy it; and

(9) Remove medication of a discharged or deceased child immediately and properly destroy it.

§749.1523. What are the requirements for discontinued or expired medication?

(a) Foster parents must properly destroy medication within 30 days after:

(1) It has been discontinued for a child;

(2) The expiration date has passed; or

(3) The child has left care without the medication.

(b) Foster parents or child-care staff must log the destruction of the medication and provide documentation to you for the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601088

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. MEDICATION RECORDS

40 TAC §§749.1541, 749.1543, 749.1545

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.1541. What records must caregivers maintain for each child receiving medication?

(a) Caregivers must maintain a cumulative record of all prescription and nonprescription medication dispensed to the child. Caregivers must maintain the medication record during the time that they provide services to the child. This record must include the:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable; and

(3) Medication name, strength, and dosage.

(b) Each time the child receives a dosage of the medication, the person who administers the medication must immediately document the:

(1) Date (day, month, and year) and the time the medication was administered;

(2) Name and signature of the person who administered the medication; and

(3) Child's refusal to accept medication, if applicable.

(c) For PRN prescriptions or over-the-counter medications, the caregivers must document the reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating.

(d) Caregivers must keep a running count of each child's prescribed medication. The medication count must match the medication documentation.

(e) The medication records of prescription and nonprescription medication dispensed to the child must be incorporated into the child's record.

§749.1543. Where must a child's medication records be maintained?

(a) The foster parents must maintain at the foster home the child's medication records for 90 days.

(b) Foster parents must submit copies of the child's medication records to you each month. You must file these medication records in the child's record.

(c) You must maintain copies of all the child's medication records for the length of time that you provide services to the child.

§749.1545. What other requirements must I meet regarding medication records?

You must make suitable forms available to caregivers for maintaining adequate records of all medications administered to a child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601089

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. MEDICATION AND LABEL ERRORS

40 TAC §§749.1561, 749.1563, 749.1565

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1561. What is a medication error?

A medication error includes, but is not limited to, the following:

- (1) A child receives the wrong medication;
- (2) A child receives medication prescribed to someone else;
- (3) A child receives the wrong dosage of medication;
- (4) A child receives medication at the wrong time;
- (5) A medication dose is skipped or missed;
- (6) A child receives expired medication;
- (7) Not following the medication administration instructions, such as giving a child medication on an empty stomach when the medication should be given with food; and
- (8) A child receives medication that was not stored as required to maintain the effectiveness of the medication, such as refrigerating or not refrigerating the medication as required, or exposing the medication to heat or sunlight.

§749.1563. What must a caregiver do if the caregiver finds a medication error?

(a) If a caregiver finds a medication error regarding a prescribed medication, the caregiver must contact a health-care professional immediately, unless the error is the type described in paragraph (4) or (5) of §749.1561 of this title (relating to What is a medication error?), and follow the health-care professional's recommendations.

(b) If a caregiver finds a medication error regarding an over-the-counter medication, the caregiver must take the appropriate and necessary actions as required by the circumstances.

(c) For all medication errors, a caregiver must document the following within 24 hours:

- (1) The time and date of the error;
- (2) The medication error;
- (3) The time and date of the call(s) to the licensed health-care professional, if applicable;
- (4) The name and title of the health-care professional contacted, if applicable; and
- (5) The health-care professional's medical recommendations for ensuring the child's safety, if applicable.

§749.1565. What must a caregiver do if the caregiver finds a medication label error?

If a caregiver finds a medication label error, the caregiver must:

- (1) Report the error to the pharmacist; and
- (2) Have the label on the medication container corrected immediately.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601090

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

40 TAC §749.1581, §749.1583

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1581. What must caregivers do if a child has an adverse reaction to a medication?

If a child has an adverse reaction to a medication, the caregiver must:

- (1) Immediately report the reaction to a health-care professional;
- (2) Follow the health-care professional's recommendations;
- (3) Seek further medical care for the child if the child's condition appears to worsen; and
- (4) Document in the child's medical record the:
 - (A) Adverse reactions that the child had to the medication;
 - (B) Time and date of call(s) to the health-care professional;
 - (C) Name and title of the health-care professional contacted; and
 - (D) Health-care professional's medical recommendations for ensuring the child's safety.

§749.1583. What must a caregiver do if a child experiences side effects from any medications?

If a child experiences side effects from any medication, the caregiver must:

- (1) Document the observed and reported side effects;
- (2) Immediately report any serious side effects to the child's physician; and
- (3) Report any other side effect to the prescribing physician within 72 hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601097

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 8. USE OF PSYCHOTROPIC MEDICATION

40 TAC §§749.1601, 749.1603, 749.1605, 749.1607, 749.1609, 749.1611

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1601. If a caregiver is not authorized to give consent, what consent must I obtain for a caregiver to administer psychotropic medication to a child?

(a) You must have written consent from a person legally authorized to give medical consent before a foster parent can administer a new prescription for a psychotropic medication to a child. The consent must be specific regarding the psychotropic medication to be administered.

(b) The written consent must be signed and dated.

§749.1603. If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give consent before requesting his consent for the child to be placed on psychotropic medication?

(a) Before requesting the person's written consent to give the child psychotropic medication, the prescribing health-care professional must give the following in writing or document a discussion with the person or a combination of both:

- (1) The child's diagnosis;
- (2) The nature of the child's mental illness or condition;
- (3) An explanation of the purpose of the medication;
- (4) A description of the benefits expected;

(5) A description of any accompanying discomforts and risks, including those which could result from long-term use of the medication, and possible side effects, including side effects that are known to frequently occur in persons, side effects to which the child

may be predisposed, and the nature and possible occurrence of irreversible symptoms;

(6) A statement of whether the medication is habituating in nature;

(7) Alternative interventions to the use of psychotropic medication that have been attempted and that have been unsuccessful;

(8) Other alternative treatments or procedures to the use of the psychotropic medication;

(9) Risks and benefits of the alternative treatments or procedures;

(10) Risks and benefits of not receiving or undergoing a treatment or procedure;

(11) An explanation that the person legally authorized to give medical consent may ask questions about the child's response to the medication, and may review your daily records on request; and

(12) An explanation that the person legally authorized to give medical consent may withdraw consent and request the medication be discontinued at any time.

(b) The health-care professional must offer to answer any questions the person legally authorized to give consent has about the medication.

(c) The person must sign a consent form that acknowledges that you have provided all of the information set forth in subsection (a) of this section. A copy of this signed consent form must be filed in the child's record.

§749.1605. If my agency does not employ or contract with the health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give medical consent prior to the health-care professional prescribing psychotropic medications to a child in care?

If you are requesting consent and the person legally authorized to give consent is not privy to this information, you must:

(1) Before requesting the person's written consent to give the child psychotropic medication, provide information in writing or document a discussion with the person regarding:

(A) The nature of the child's mental illness or condition;

(B) A general explanation of the purpose of the medication;

(C) A general description of the benefits expected;

(D) An explanation that the person may ask questions about the child's response to the medication; and

(E) An explanation that the person may withdraw medical consent and request the medication be discontinued at any time.

(2) Offer to answer any questions the person legally authorized to give medical consent has about the medication and/or provide the name and telephone number of the prescribing health-care professional for further information.

(3) Obtain a signed consent form from the person legally authorized to give medical consent that acknowledges that you have provided all of the information set forth in paragraph (1) of this section. A copy of this signed consent form must be filed in the child's record.

§749.1607. What are the requirements if a physician orders administration of a psychotropic medication to a child in an emergency?

(a) If a physician has made a determination that there is an emergency according to §266.009 of the Family Code and the emer-

gency requires the administration of a psychotropic medication, then you must follow the physician's orders and do not have to obtain consent prior to the administration of the medication.

(b) Within 72 hours after you have administered the medication, you must notify the parent and the person legally authorized to give medical consent.

(c) The physician's statement regarding the emergency and the prescription must be documented in the child's record.

§749.1609. What information must be documented about a child's use of psychotropic medication?

(a) You must ensure that caregivers maintain a daily record of the child's use of such medication according to the requirements in §749.1541 of this title (relating to What records must caregivers maintain for each child receiving medication?).

(b) Caregivers must document in the child's medication record a description of the child's response to the medication and an assessment of its effectiveness on at least a quarterly basis.

(c) You must provide the information in subsection (b) of this section to the prescribing health-care professional or the child's current health-care professional to use in evaluating the appropriateness of continuing the medication. You must document the health-care professional's evaluation and review in the child's record.

§749.1611. If I employ or contract with a health-care professional who prescribes psychotropic medication to a child, what are the requirements for evaluating whether a child should continue taking a psychotropic medication?

(a) If a child takes psychotropic medications, the prescribing health-care professional must evaluate and document in the child's medication record a description of the child's response to the medication and an assessment of its effectiveness and the appropriateness of continuing the medication on at least a quarterly basis. The written evaluation must include any reasons for discontinuing the medication.

(b) If the health-care professional decides that he can evaluate the appropriateness of continuing the medication without seeing the child, you do not have to schedule an appointment for the evaluation.

(c) The health-care professional must consider the target symptoms and treatment goals in evaluating the child's use of psychotropic medications.

(d) The health-care professional must document whether the child needs to continue taking the medication. You must document the health-care professional's decision in the child's record.

(e) If the health-care professional does not substantiate the effectiveness of a specific psychotropic medication within 90 days, the health-care professional must provide a written rationale for continuing the medication for an additional period. The continuation of the medication may not exceed an additional 90 days (for a total of 180 days) if the health-care professional does not substantiate effectiveness. A copy of the written rationale must be documented in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601098

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. PROTECTIVE DEVICES

40 TAC §§749.1641, 749.1643, 749.1645, 749.1647

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1641. What is a protective device?

(a) A protective device is a restraint device that:

(1) Protects a person from involuntary self-injurious behavior or permits wounds to heal; and

(2) Does not prohibit a person's mobility.

(b) Examples of a protective device are helmets, elbow guards, mittens, bedrails, and wheelchair seat belts.

(c) If used appropriately, devices intended to encourage mobility or minimally restrain a young child for safety purposes, such as wheelchairs, car seats, high chairs, strollers, and child leashes manufactured and sold specifically to harness a young child for safety purposes, are not protective devices.

§749.1643. What does "involuntary self-injurious behavior" mean when used in this division?

Involuntary self-injurious behavior means a person's physical movements that are automatic and not subject to control of the person's will that may inflict injury to the person.

§749.1645. May I use protective devices?

(a) You may use protective devices if:

(1) Your policies allow their use; and

(2) A licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the protective device is permitted.

(b) You may use bed rails that extend, from the head, half the length of the bed, for assistance with mobility. However, you may not use bed rails that extend the entire length of the bed except for a child with primary medical needs, if authorized by a physician.

(c) You may not use protective devices as:

(1) Punishment;

(2) Retribution or retaliation;

(3) A means to get a child to comply;

- (4) A convenience for caregivers or other persons; or
- (5) A substitute for effective treatment or habilitation.

(d) You must document the use of protective devices in the child's record, service plan, and service plan reviews. Clinical justification for continued use of protective devices must be discussed and documented in the child's service plan review.

§749.1647. Who may use PRN orders with respect to protective devices?

A licensed physician ordering protective devices may use PRN orders. The physician must review PRN orders for protective devices at least every 90 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601099

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 10. SUPPORTIVE DEVICES

40 TAC §§749.1671, 749.1673, 749.1675

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1671. What is a supportive device?

(a) A supportive device is a restraint device used:

- (1) To support a person's posture;
- (2) To assist a person who cannot obtain and/or maintain normal physical functioning to improve his mobility and independent functioning; or
- (3) As an adjunct to proper care and treatment, for example physical therapy.

(b) The purpose of a supportive device is not to restrict movement.

§749.1673. May I use supportive devices?

(a) You may use supportive devices if:

- (1) Your policies allow their use; and
- (2) A licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the supportive device is permitted.

(b) You may not use a supportive device as a substitute for appropriate nursing care.

(c) You may not use supportive devices that include tying or depriving or limiting the use of a child's hands or feet.

(d) You may not use supportive devices as:

- (1) Punishment;
- (2) Retribution or retaliation;
- (3) Means to get a child to comply;
- (4) A convenience for caregivers or other persons; or
- (5) A substitute for effective treatment or habilitation.

(e) If a device is not specifically for assisting with sleep or safety during sleep, you must remove the device during rest periods.

(f) You must document the use of supportive devices in the child's record, service plan, and service plan reviews. Clinical justification for continued use of protective devices must be discussed and documented in the child's service plan review.

§749.1675. Who may use PRN orders with respect to supportive devices?

A licensed physician ordering supportive devices may use PRN orders. The physician must review PRN orders for supportive devices at least every 90 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601100

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§749.1801, 749.1803, 749.1805, 749.1807, 749.1809, 749.1811, 749.1813, 749.1815, 749.1817, 749.1819

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1801. What do certain words mean in this division?

These words have the following meanings in this division:

(1) Baby bungee jumper--A bucket seat that is suspended from a doorway by an elastic bungee cord that allows an infant to bounce while sitting in the seat.

(2) Baby walker--A baby walker allows an infant to sit inside the walker equipped with rollers or wheels and move across the floor.

(3) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

§749.1803. What are the basic care requirements for an infant?

(a) Each infant must receive individual attention, including playing, talking, cuddling, and holding.

(b) A caregiver must provide prompt attention to an infant's physical needs, such as feeding and diapering.

(c) An infant's caregiver must ensure that the environment is safe. For example, free the area of objects that may choke or harm the infant, take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.

(d) An infant's caregiver must never leave the infant unsupervised. A sleeping infant is considered supervised if the caregiver uses a video camera or audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

§749.1805. What furnishings and equipment must I have in an infant care area?

An infant care area must at a minimum include the following furnishings and equipment:

(1) An individual crib for each infant; and

(2) A sufficient number of toys to keep each child engaged in activities.

§749.1807. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;

(2) Sheets that fit snugly and do not present an entanglement hazard;

(3) A mattress that is waterproof or washable;

(4) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(5) A maximum of 2 3/8 inches between crib slats or poles;

(6) No corner posts over 1/16 inch above the end panels;

(7) No cutout areas in the headboard or footboard that would entrap a child's head or body; and

(8) Drop rails, if present, which fasten securely and cannot be opened by a child.

(b) Caregivers must sanitize each crib before a different child uses it and when soiled.

(c) Caregivers must never leave children in the crib with the side down.

(d) The foster home must not have stackable cribs.

§749.1809. Are mesh cribs or port-a-cribs allowed?

A foster home may use a full-size, portable, or mesh-side crib if:

(1) Caregivers follow the manufacturer's instructions;

(2) The crib has:

(A) A minimum height of 22 inches from the top of the railing to the mattress support at its lowest level;

(B) Mesh openings that are 1/4 inch or less;

(C) Mesh that is securely attached to the top rail, side rail, and floor plate; and

(D) Folded sides that securely latch in place when raised; and

(3) Caregivers never leave a child in a mesh-sided crib with a side folded down.

§749.1811. What equipment must have safety straps before I can use it with an infant?

(a) A high chair, swing, stroller, infant carrier, rocker, bouncer seat, or a similar type of equipment that a foster home uses for an infant must be equipped with safety straps; and

(b) The safety straps must be fastened whenever the infant is using the equipment.

§749.1813. What types of equipment may a foster home not use with infants?

(a) A foster home may not use any of the following types of equipment with infants:

(1) Baby walkers;

(2) Baby bungee jumpers;

(3) Accordion safety gates;

(4) Toys that are small enough to swallow or choke a child; and

(5) Bean bags, waterbeds, and foam pads for use as sleep- ing equipment.

(b) A foster home may not use soft bedding, such as stuffed toys, quilts, pillows, bumper pads, and comforters in a crib for an infant six months old or younger.

§749.1815. Are infants required to sleep on their backs?

Yes. Caregivers must place an infant not yet able to turn over on his own in a face-up sleeping position.

§749.1817. If an infant has difficulty falling asleep, may the infant's head or crib be covered?

No. An Infant must not have his head, face, or crib covered at any time by an item such as a blanket, linen, or clothing.

§749.1819. What are the specific requirements for feeding an infant?

(a) Caregivers must feed an infant based on the recommendations of the infant's licensed physician.

(b) Unless recommendations from the service team are contrary, caregivers must hold the infant while feeding him if the infant is:

(1) Birth through six months old; or

(2) Unable to sit unassisted in a high chair or other seating equipment during feeding.

(c) Caregivers must never prop a bottle by supporting it with anything other than the child or adult's hand.

(d) A caregiver who cares for more than one infant must:

(1) Label each bottle and training cup with the child's first name and initial of last name;

(2) Not permit the infant to share bottles or training cups; and

(3) Clean high chair trays before each use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601101

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADDITIONAL REQUIREMENTS FOR TODDLER CARE

40 TAC §749.1841

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.1841. What are the basic care requirements for a toddler?

(a) Each toddler must receive individual attention, including playing, talking, and cuddling.

(b) A toddler's caregiver must ensure that the environment is safe. For example, free the area of objects that may choke or harm the toddler, take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.

(c) A toddler's caregiver must never leave the toddler unsupervised. A sleeping toddler is considered supervised if the caregiver uses a video camera or an audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601102

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. ADDITIONAL REQUIREMENTS FOR PREGNANT CHILDREN

40 TAC §§749.1861, 749.1863, 749.1865

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1861. What information must I provide a pregnant child regarding her pregnancy?

You must:

(1) Ensure information, training, and counseling is available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth;

(2) Ensure the pregnant child receives nutritional counseling and guidance that meets generally accepted standards, including nutrition during pregnancy, lactation, and foods to avoid;

(3) Inform the child of her right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child; and

(4) Document in the child's record the information and counseling that you provide.

§749.1863. Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?

If your policies allow for the use of personal restraints on a pregnant child:

(1) The health-care professional attending to the child's pregnancy must document whether any type of emergency behavior intervention that your policies allow is inadvisable; and

(2) You may not use any emergency behavior intervention that the child's health-care professional attending to her pregnancy finds inadvisable.

§749.1865. If my policies permit the admission of adolescent parents with their child(ren), who is responsible for the care of an adolescent's child?

If your policies permit the admission of adolescent parents with their child(ren):

(1) An adolescent parent must provide most of the care for her child;

(2) Caregivers must be available to the adolescent parent as a resource and support; and

(3) When you care for an adolescent's child in the adolescent parent's absence, you are responsible for that child as if the child is in your care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601103

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. EDUCATIONAL SERVICES

40 TAC §§749.1891, 749.1893, 749.1895

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1891. What responsibilities do I have for the education of a child in care?

(a) You must arrange an appropriate education for each child. You must:

(1) Ensure a school-age child has the training and education in the least restrictive setting necessary to meet the child's needs and abilities;

(2) Ensure the child in care attends an educational facility or program approved or accredited by the Texas Education Agency; and

(3) Advocate that a school-age child receives the educational instruction to which he is entitled under provisions of federal and state law and regulations.

(b) For children receiving treatment services you must designate a liaison between the agency and the child's school.

§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?

Caregivers must:

(1) Review report cards and other information received from teachers or school authorities with the child and provide necessary information to agency staff;

(2) Counsel and assist the child regarding adequate classroom performance;

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities to the extent of the child's interests and abilities and in accordance with the child's service plan;

(4) Provide a quiet, well-lighted space for the child to study and allow regular times for homework and study;

(5) Know what emergency behavior interventions are permitted and being used with the child;

(6) Request ARD, IEP, and ITP meetings if concerned with the child's educational program or if the child does not appear to be making progress; and

(7) Attend ARD, IEP, ITP meetings, other school staffings, and conferences to represent the child's educational best interests, including the child being evaluated for and provided with services needed for the child to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

§749.1895. What are the specific requirements for the educational program of a child diagnosed with a pervasive development disorder?

You must ensure that the educational program for a child with a pervasive development disorder:

(1) Encourages normalization through appropriate stimulation and by encouraging self-help skills; and

(2) Is appropriate to his intellectual and social functioning.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601104

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. RECREATIONAL SERVICES

40 TAC §§749.1921, 749.1923, 749.1925, 749.1927

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?

(a) Caregivers must provide daily indoor and outdoor recreational and other activities appropriate to the needs, interests, and abilities of the children so every child may participate.

(b) You must have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities is provided for children in care. Such opportunities must be based on individual interests, with personal and treatment needs being considered.

(c) Except for written medical orders to the contrary, your programs for non-ambulatory children must include:

(1) Physical fitness development that prescribes a variety of body positions; and

(2) Changes in environment.

(d) Each child must have individual free time as appropriate to the child's age and abilities.

(e) Caregivers must provide the following types of recreational activities based on each individual child's needs:
Figure: 40 TAC §749.1921(e)

§749.1923. What physical fitness activities must caregivers provide for a child with primary medical needs?

(a) A child with primary medical needs must have a minimum of one hour of physical stimulation each day.

(b) Training programs for non-mobile children must include development of physical fitness. This must include a variety of body positions and changes in environment.

§749.1925. What type of daily schedule must caregivers provide for a child with primary medical needs?

A child needing services to improve adaptive functioning must have a schedule that is based on the normalization principle. In order to help the child obtain an existence as normal as possible, the daily schedule must:

(1) Demonstrate an understanding of normal child development; and

(2) Enhance the child's physical, emotional, and social development.

§749.1927. To what extent must a child with primary medical needs have community living experiences?

The child's surroundings and experiences must reflect normal patterns of community living as closely as possible and as appropriate for the child's special needs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601105

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 6. DISCIPLINE AND PUNISHMENT

40 TAC §§749.1951, 749.1953, 749.1955, 749.1957, 749.1959, 749.1961

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.1951. What are the requirements for disciplinary measures?

(a) Only a caregiver known to and knowledgeable of a child may discipline the child.

(b) Each disciplinary measure must:

(1) Be consistent with your policies and procedures;

(2) Not be physically or emotionally damaging to the child;

(3) Be individualized to meet each child's needs;

(4) Be appropriate to the child's level of understanding, age, and developmental level; and

(5) Be appropriate to the incident and severity of the behavior demonstrated.

(c) Each disciplinary measure must be tailored to teach the child acceptable behavior and self-control. The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

§749.1953. May I use corporal punishment for children in care?

(a) You may not use or threaten to use corporal punishment with any child in care.

(b) Corporal punishment is the infliction of physical pain on any part of a child's body as means of controlling or managing the child's behavior. It includes:

(1) Hitting or spanking a child with a hand or instrument; or

(2) Forcing or requiring the child to do any of the following as a method of managing or controlling behavior:

(A) Perform any form of physical exercise, such as running laps or doing sit ups or push ups;

(B) Hold a physical position, such as kneeling or squatting; or

(C) Do any form of "unproductive work."

§749.1955. What is "unproductive work"?

(a) "Unproductive work" is work that serves no purpose except to demean the child. Examples include moving rocks or logs from one pile to another or digging a hole and then filling it in. Unproductive work is never an appropriate behavior management tool.

(b) "Unproductive work" does not include work that corrects damage that the child's behavior caused. For example, you may require a child who defaces a fence or wall to repaint it. This example includes a logical consequence and an acceptable behavior management tool.

§749.1957. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include, but are not limited to:

(1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment;

(2) Denial of mail or visits with their families as discipline or punishment;

(3) Threatening with the loss of placement as discipline or punishment;

(4) Using sarcastic or cruel humor and verbal abuse;

(5) Standing in a corner or maintaining an uncomfortable physical position, such as kneeling, or holding his arms out;

(6) Pinching, pulling hair, or biting a child;

(7) Putting anything in or on a child's mouth, such as soap or tape;

(8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;

(9) Subjecting a child to harsh, abusive, or profane language;

(10) Placing a child in a dark room, bathroom, or closet;

(11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;

(12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;

(13) Denying basic child rights as a form of discipline or punishment;

(14) Withholding food that meets the child's nutritional requirements; and

(15) Using or threatening to use emergency behavior intervention as discipline or punishment.

§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?

(a) Within limits, a foster parent may restrict a child's activities as a behavior management tool.

(b) Restrictions of activities, other than school or chores, which will be imposed on a child for more than seven days, must be reviewed with and approved by the child placement management staff or treatment director prior to or within 24 hours of imposing the restriction.

(c) Restrictions to communication and visitation with family, which will be imposed on a child, must have prior approval of the child placement management staff or treatment director.

(d) Restrictions to a particular room or building that will be imposed on a child for more than 24 hours must have approval from the service planning team, a professional service provider, or treatment director prior to or within 24 hours of imposing the restriction.

(e) You must inform the child and parent about any such restrictions you place on the child.

(f) Documentation of all approvals, justification for the restriction, and informing the child and parents must be in the child's record.

§749.1961. May a person in care discipline or punish another person in care?

No. A person in care must not punish or discipline another person in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601106

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION DIVISION 1. DEFINITIONS

40 TAC §749.2001

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.2001. What do certain words mean in this subchapter?

These words have the following meaning in this subchapter:

(1) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.

(2) De-escalation--See §749.43(12) of this title (relating to What do certain words and terms mean in this chapter?).

(3) Emergency behavior intervention--See §749.43(17) of this title.

(4) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl for an allergic reaction or medication to control seizures), is not emergency medication and is not regulated as such under this chapter.

(5) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(6) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(7) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(8) PRN--See §749.43(42) of this title (relating to What do certain words and terms mean in this chapter?).

(9) Prone restraint--Placing a child in a chest down restraint hold.

(10) Quiet time--A type of behavior modification where a child voluntarily enters and remains in a designated area for a certain period of time.

(11) Seclusion--A type of emergency behavior intervention that places a child, for any period of time, in a room or other area where the child is alone and is physically prevented from leaving by a locked or barricaded entryway. An intervention that restricts a child to a room, but involves a caregiver placing his body between the child and the exit from that area (e.g. standing in the doorway of a room), is not seclusion because the child is not alone.

(12) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(13) Supine restraint--Placing a child in a chest up restraint hold.

(14) Time out--A type of behavior modification where a child is restricted to a designated area, including his room, for a certain period of time, but the child is not physically prevented from leaving by a locked or barricaded entryway.

(15) Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.

(16) Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time (e.g. three seclusions within a seven-day period).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601107

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §§749.2051, 749.2053, 749.2055, 749.2057, 749.2059, 749.2061, 749.2063

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2051. What types of emergency behavior intervention may I administer?

(a) If permitted in your policies and you meet the requirements of this subchapter, a caregiver may administer the following types of emergency behavior intervention to a child in your care:

- (1) Short personal restraint;
- (2) Personal restraint; and
- (3) Emergency medication.

(b) You may never administer chemical restraints, mechanical restraints, or seclusion.

§749.2053. Who may administer emergency behavior intervention?

Only a caregiver qualified in emergency behavior intervention may administer any form of emergency behavior intervention, except for the short personal restraint of a child five years old or younger.

§749.2055. What actions must a caregiver take before using a permitted type of emergency behavior intervention?

Before using a permitted type of emergency behavior intervention, the caregiver must:

(1) Attempt less restrictive behavior interventions that prove to be ineffective at defusing the situation; and

(2) Determine that the basis for the emergency behavior intervention is:

(A) An emergency situation;

(B) A need for a personal restraint to administer intramuscular medication or other medical treatments prescribed by a licensed physician, such as administering insulin to a child with diabetes; or

(C) A need for a personal restraint in a foster home where a child is significantly damaging property, such as breaking car windows or putting holes into walls. If this is the basis of the personal restraint, only a transitional hold may be used and only to prevent the damage.

§749.2057. What requirements must I meet in the use of less restrictive behavior interventions?

(a) Caregivers must follow your policies and procedures for attempting less restrictive interventions.

(b) Less restrictive measures include quiet time and time out.
§749.2059. What is the appropriate use for a short personal restraint?

Generally, a short personal restraint is used in urgent situations, such as:

(1) To protect the child from external danger that causes imminent significant risk to the child, such as preventing the child from running into the street or coming into contact with a hot stove;

(2) To intervene when a child under the age of five (chronological or developmental age) demonstrates disruptive behavior, if other efforts to de-escalate the child's behavior have failed; or

(3) When a child over five years old demonstrates behavior disruptive to the environment or milieu, such as disrobing in public, provoking others that creates a safety risk, or to intervene to prevent a child from physically fighting.

§749.2061. What precautions must a caregiver take when implementing a short personal restraint?

(a) When a caregiver implements a short personal restraint, the caregiver must:

(1) Minimize the risk of physical discomfort, harm, or pain to the child; and

(2) Use the minimal amount of reasonable and necessary physical force.

(b) A caregiver may not use any of the following techniques:

(1) A prone or supine restraint;

(2) Restraints that impair the child's breathing by putting pressure on the child's torso, including leaning a child forward during a seated restraint and basket holds;

(3) Restraints that obstruct the airways of the child or impair the breathing of the child, including procedures that place anything in, on, or over the child's mouth, nose, or neck, or impede the child's lungs from expanding;

(4) Restraints that obstruct the caregiver's view of the child's face;

(5) Restraints that interfere with the child's ability to communicate or vocalize distress; or

(6) Restraints that twist or place the child's limb(s) behind the child's back.

§749.2063. Are there any purposes for which emergency behavior intervention cannot be used?

Emergency behavior intervention may never be used as:

(1) Punishment;

(2) Retribution or retaliation;

(3) A means to get a child to comply;

(4) A convenience for caregivers or other persons; or

(5) A substitute for effective treatment or habilitation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601108

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. ORDERS

40 TAC §§749.2101, 749.2103, 749.2105, 749.2107

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2101. Are written orders required to administer emergency behavior intervention, and if so, who can write them?

According to the following chart, written orders by certain professionals are required to administer certain emergency behavior intervention:
Figure: 40 TAC §749.2101

§749.2103. Must the written order be in a child's record before a caregiver can use an emergency behavior intervention on a child?

Yes, any type of written order that is required must be in the child's record before a caregiver can use emergency behavior intervention on that child.

§749.2105. What information must a written order include?

(a) All written orders must include the following:

(1) A statement that the particular type of emergency behavior intervention may only be used in an emergency situation;

(2) Designation of the specific intervention and procedure or technique that is authorized;

(3) Any specific measures for ensuring the child's health, safety, and well being, and the privacy of the setting that safeguards the child's personal dignity;

(4) A complete description of the behaviors and circumstances under which the intervention may be used;

(5) Instructions for observation or heightened observation of the child during the intervention;

(6) The behaviors that indicate the child is ready to be released from the intervention;

(7) The maximum length of time the child may be restrained regardless of behaviors exhibited;

(8) The prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention; and

(9) Clinical justification for the intervention.

(b) For personal restraint, the written order must also include:

(1) The number of times a child may be restrained in a seven-day period; and

(2) If the orders allow more than three restraints within a seven-day period, a plan for reducing the need for intervention.

(c) For emergency medication, the written order must also include instructions on how to administer the medication.

§749.2107. Under what conditions are PRN orders permitted for a specific child?

PRN orders for certain emergency behavior interventions are permitted under the following conditions:

Figure: 40 TAC §749.2107

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601109

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2151, §749.2153

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2151. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?

(a) The use of emergency behavior intervention must be an appropriate response to the behavior demonstrated, and de-escalation must have failed.

(b) The caregiver must act to protect the child's safety and consider the:

(1) Characteristics of the immediate physical environment;

(2) Permitted types of emergency behavior intervention;

and

(3) Potential risk of harm in using emergency behavior intervention versus the risk of not using emergency behavior intervention.

(c) The caregiver must:

(1) Initiate an emergency behavior intervention in a way that minimizes the risk of physical discomfort, harm, or pain to the child; and

(2) Use the minimal amount of reasonable and necessary physical force to implement the intervention.

(d) The caregiver must make every effort to protect the child's:

(1) Privacy, including shielding the child from onlookers; and

(2) Personal dignity and well-being, including ensuring that the child's body is appropriately covered.

(e) As soon as possible after starting any type of emergency behavior intervention, the caregiver must:

(1) Explain to the child the behaviors the child must exhibit to be released or have the intervention reduced, if applicable; and

(2) Permit the child to suggest actions the caregivers can take to help the child de-escalate.

(f) If the child does not appear to understand what he must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

§749.2153. When must a caregiver release a child from an emergency behavior intervention?

A child must be released as follows:

Figure: 40 TAC §749.2153

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601110

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §§749.2201, 749.2203, 749.2205

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2201. Who must monitor a personal restraint?

During any personal restraint, a caregiver qualified in emergency behavior intervention must monitor the child's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being.

§749.2203. What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates he cannot breathe and immediately seeking medical assistance from a health-care professional. The caregiver must take into account that a child may thrash about more violently as he struggles to breathe.

§749.2205. What personal restraint, including short personal restraint, techniques are prohibited?

(a) The following personal restraint, including short personal techniques, are prohibited:

(1) Restraints that impair the child's breathing by putting pressure on the child's torso, including restraints that obstruct the child's lungs from expanding such as leaning a child forward during a seated restraint, or basket holds;

(2) Restraints that obstruct the child's airway, including procedures that place anything in, on, or over the child's mouth, nose, or neck;

(3) Restraints that obstruct a caregiver's ability to view the child's face;

(4) Restraints that interfere with the child's ability to communicate or vocalize distress; or

(5) Restraints that twist or place the child's limb(s) behind the child's back.

(b) Prone and supine restraints are also prohibited as a short personal restraint.

(c) Prone and supine restraints are also prohibited as a personal restraint except:

(1) As a transitional hold that lasts no longer than one minute;

(2) As a last resort when other less restrictive interventions have proven to be ineffective; and

(3) When an observer meeting the following qualifications ensures the child's breathing is not impaired:

(A) Trained to identify risks associated with positional, compression, or restraint asphyxia;

(B) Trained to identify risks associated with prone and supine holds; and

(C) Not involved in the restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601111

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2231, §749.2233

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2231. May a caregiver successively use emergency behavior interventions on a child?

(a) A caregiver may successively use emergency behavior interventions on a child only if:

(1) Allowed by your policies;

(2) Permitted by rules of this subchapter for both types of emergency behavior intervention; and

(3) Written orders specifically allow the combination.

(b) The written orders must include clinical justification for the successive use of emergency behavior interventions that goes beyond the justification for the use of a single intervention. The licensed physician ordering the emergency medication must provide clinical justification for the combination of emergency medication and personal restraint.

(c) A caregiver must allow the child:

(1) Bathroom privileges at least once every two hours;

(2) An opportunity to drink water at least once every two hours;

(3) Regularly prescribed medications unless otherwise ordered by the licensed physician;

(4) Regularly scheduled meals and snacks served in a safe and appropriate manner; and

(5) An environment that is adequately ventilated during warm weather, adequately heated during cold weather, appropriately lighted, and free of safety hazards.

§749.2233. May a caregiver simultaneously use emergency medication in combination with personal restraint?

(a) A caregiver may simultaneously use emergency medication in combination with personal restraint only if:

(1) Allowed by your policies;

(2) Permitted by the rules of this subchapter for both types of emergency behavior intervention; and

(3) Written orders specifically allow the combination.

(b) The written orders must include clinical justification for the combination of emergency medication with personal restraint that goes beyond the justification for the use of a single emergency behavior intervention. If they are different people, both the licensed physician ordering the emergency medication and the professional ordering the personal restraint must provide the clinical justification for the combination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601112

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2281, §749.2283

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

Figure: 40 TAC §749.2281

§749.2283. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

Figure: 40 TAC §749.2283

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601113

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§749.2301, 749.2303, 749.2305

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2301. What follow-up actions must caregivers take after the child's behavior no longer constitutes an emergency situation?

(a) The caregivers must take appropriate actions to help the child return to routine activities. The follow-up actions of the caregivers must include:

(1) Providing the child with an appropriate transition and offering the child an opportunity to return to regular activities;

(2) Observing the child for at least 15 minutes; and

(3) Providing the child with an opportunity to discuss the situation that led to the need for emergency behavior intervention and the caregiver's reaction to that situation. The discussion must be held in private as soon as possible and no later than 48 hours after the child's use of an emergency medication or release from any emergency behavior intervention.

(b) Caregivers involved in the emergency behavior intervention must conduct a post-emergency behavior intervention discussion. The goal of the discussion is to allow the child and caregiver to discuss:

(1) The child's behavior and the circumstances that constituted the need for an emergency behavior intervention;

(2) The strategies attempted before the use of the emergency behavior intervention and the child's reaction to those strategies;

(3) The emergency behavior intervention itself and the child's reaction to the emergency behavior intervention;

(4) How caregivers can assist the child in regaining self-control in the future to avoid the administration of an emergency behavior intervention; and

(5) What the child can do to regain self-control in the future to avoid the administration of an emergency behavior intervention.

(c) Caregivers involved in the emergency behavior intervention must:

(1) Debrief with child placing staff concerning the incident as soon as possible after the situation has stabilized; and

(2) Make every effort to debrief with children in care who witness the incident.

(d) The child placing staff must review and document the use of the emergency behavior intervention within 72 hours of the intervention.

(e) The caregivers do not have to return the child to previous activities or place the child in current activities that the group is participating in if the caregivers deem the child's participation is not in the best interests of the child or the other children in the group. However, caregivers must engage the child in an alternative routine activity.

(f) This rule does not apply to short personal restraint.

§749.2303. What must the caregiver document after discussing his use of an emergency behavior intervention with a child?

(a) The date and time the caregiver offered the discussion;

(b) The child's reaction to the opportunity for discussion;

(c) The date and time the discussion took place, if applicable;
and

(d) The content of the discussion, if applicable.

§749.2305. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) The child's name;

(2) The basis for the emergency behavior intervention;

(3) A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;

(4) The de-escalation attempted before the use of the emergency behavior intervention and the child's reaction to those strategies;

(5) The specific emergency behavior intervention administered;

(6) The date and time the intervention was administered;

(7) The length of time the child was restrained;

(8) The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;

(9) The name of the person(s) who observed the child;

(10) The duration of the emergency behavior intervention;

(11) All attempts to explain to the child what behaviors were necessary for release from the intervention;

(12) The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention;

(13) The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention; and

(14) Supervisors of caregivers involved in emergency behavior intervention of a child must document their review of the use of the intervention within 72 hours of the incident.

(b) If personal restraint is used, documentation must also include the specific restraint techniques used, including a prone or supine restraint used as a transitional hold.

(c) If emergency medication is used, documentation must also include the specific medication used and the dosage administered to the child.

(d) This rule does not apply to short personal restraints.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601114

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 9. TRIGGERED REVIEWS

40 TAC §§749.2331, 749.2333, 749.2335, 749.2337, 749.2339

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2331. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

The following circumstances trigger a review for certain emergency behavior interventions:

Figure: 40 TAC §749.2331

§749.2333. When must a triggered review occur?

(a) A triggered review must occur as soon as possible, but no later than 30 days after the review is triggered.

(b) The regularly scheduled review of the child's service plan can serve as the triggered review if it meets the requirements in §749.2337 of this title (relating to What must the triggered review include and what must be documented in the child's record?) and takes place no later than 30 days after the review is triggered.

§749.2335. Who must participate in the triggered review?

The service planning team must participate in the triggered review.

§749.2337. What must the triggered review include and what must be documented in the child's record?

(a) The same items that must be included and documented in an initial service plan, (see §749.1309 of this title (relating to What must a child's initial service plan include?));

(b) A review of the records and orders of the emergency behavior interventions;

(c) A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;

(d) An examination of alternatives to manage the child's behavior and to assist the child in managing his own behavior; and

(e) A written plan for reducing the need for emergency behavior intervention.

§749.2339. What if there are four triggered reviews within a 90-day period?

If there are four triggered reviews within a 90-day period:

(1) A licensed psychiatrist, psychologist, clinical social worker, professional counselor, or marriage and family therapist must examine the child; and

(2) The licensed professional must make service plan recommendations regarding the use of emergency behavior interventions. You must document these recommendations in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601115

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 10. OVERALL AGENCY EVALUATION

40 TAC §749.2381, §749.2383

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2381. What is an overall agency evaluation?

(a) The overall agency evaluation is an annual review regarding:

(1) The use and effectiveness of emergency behavior interventions at your agency; and

(2) Your emergency behavior intervention policies and procedures, including the training policy and curriculum.

(b) The objectives of the evaluation are to:

(1) Develop and maintain an environment that supports positive and constructive behaviors of children in care;

(2) Use any type of emergency behavior intervention safely, appropriately, and effectively; and

(3) Eliminate or reduce physical injuries and any other negative side effects on the child's behavior or emotional development resulting from the emergency behavior interventions.

(c) One focus of the evaluation must be on:

(1) The frequency, patterns, and effectiveness of the types of emergency behavior intervention techniques that are used for all children in your foster homes;

(2) Strategies to reduce the need for emergency behavior interventions for all children in your foster homes; and

(3) Specific strategies to reduce the need for use of specific types of emergency behavior intervention techniques for all children in your foster homes.

(d) The results of each overall agency evaluation must be made available to us for review.

§749.2383. What data must be collected?

(a) Quarterly, you must collect, document, and review aggregate numbers of emergency behavior interventions by type of intervention.

(b) This information must be reported to us quarterly.

(c) You must maintain the data for five years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601116

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 1. GENERAL REQUIREMENTS

40 TAC §§749.2401, 749.2403, 749.2405

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2401. If one spouse will not be involved in the care of foster children, may I verify the spouse who will provide care individually as a foster parent?

No. In order for one spouse to be a foster parent, you must verify both of them to provide foster care.

§749.2403. What minimum age requirement must foster parents and caregivers meet?

Each caregiver in a home that you verify on or after January 1, 2007, must be at least 21 years old. Each caregiver in a home that you verified prior to that date must be at least 18 years old.

§749.2405. Will my home have to be re-verified if I am a single foster parent and I get married after my home is verified?

Yes, you will have to re-verify that home in both spouse's names.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601117

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. FOSTER HOME SCREENINGS

40 TAC §§749.2441, 749.2443, 749.2445, 749.2447, 749.2449, 749.2451

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2441. Can I verify foster homes anywhere in the state?

(a) For each permit, you must choose an area covering no more than 40 contiguous counties. We must approve an additional permit for each additional area.

(b) If you were licensed before January 1, 2007, you have five years from January 1, 2007, to comply with this requirement.

§749.2443. Do the requirements described in §749.2441 of this title (relating to Can I verify foster homes anywhere in the state?) apply to the counties in which I place children for adoption?

No, you can place children for adoption anywhere in Texas.

§749.2445. What is a foster home screening?

(a) You must complete a foster home screening prior to verifying the foster home.

(b) Your child placement management staff must review and approve each foster home screening.

(c) The foster home screening must document:

(1) Required information (see §749.2447 of this title (relating to What information must I obtain for the foster home screening?));

(2) An assessment of the information obtained to determine whether the applicant meets the requirements for verification; and

(3) An evaluation of the information obtained in order to make recommendations about the applicant's capacity to work with children, including but not limited to age, gender, special needs, and number of children.

§749.2447. What information must I obtain for the foster home screening?

You must obtain, document, and assess the following information about a prospective foster home:

Figure: 40 TAC §749.2447

§749.2449. Whom must I interview when conducting a foster home screening?

(a) Interviews for a foster home screening must include at least:

(1) One individual interview with each prospective foster parent;

(2) One individual interview with each child three years old or older living in the home either full or part time;

(3) One individual interview with each other person living full or part time with the family;

(4) One joint interview with the prospective foster parents;

(5) One family group interview with all family members living in the home; and

(6) One interview, by telephone, in person, or by letter, with any minor child 12 years old or older or adult child of the prospective foster parents not living in the home. If you cannot reach an adult child to interview, you must document your diligent efforts.

(b) You must visit the home at least once when all members of the household are present.

§749.2451. What are the requirements for documenting the interviews I conduct for a foster home screening?

(a) You must document all interviews and attempts to interview persons you are required to interview for a foster home screening.

(b) The documentation must include the dates and methods used to contact the required persons, the dates of the interviews, who was present at the interviews, their relationship to the prospective foster parents, and a summary of the interviews.

(c) This documentation must be a part of the foster home record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601118

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §§749.2471, 749.2473, 749.2475, 749.2477, 749.2479, 749.2481, 749.2483, 749.2485, 749.2487, 749.2489, 749.2491, 749.2493

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2471. What must I do to verify a foster home?

Verifying a foster home includes the following steps:

(1) Completing and documenting the requirements for §749.2447 of this title (relating to What information must I obtain for the foster home screening?);

(2) Completing and documenting the required interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);

(3) Obtaining the following:

(A) A floor plan of the home showing dimensions and purposes of all rooms in the home and identifying indoor areas for children's use;

(B) A sketch or photo of the outside areas showing buildings, driveways, fences, storage areas, gardens, recreation areas, pools, ponds, or other bodies of water;

(C) An approved fire inspection; and

(D) An approved health inspection;

(4) Inspecting the home to ensure and document that the home meets appropriate rules of this chapter, including:

(A) TB testing, see §749.609 of this title (relating to What are the requirements for tuberculosis testing?) and §749.611 of this title (relating to How do I document the recommendations of a local health authority or the regional Department of State Health Services for tuberculosis testing?);

(B) Subchapter K of this chapter (relating to Foster Care Services: Daily Care and Problem Management; and

(C) Subchapter O of this title (relating to Foster Homes: Health and Safety Requirements, Environment, Space and Equipment);

(5) If the home will provide treatment services, ensuring that the home complies with the policies developed according to §749.349 of this title (relating to What additional policies must I develop for foster homes that provide treatment services?);

(6) If the home will provide a transitional living program, ensuring the home complies with the policies developed according to §749.351 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(7) Evaluating all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided; and

(8) Obtaining from the child placement management staff review and approval of the screenings, home study, and the recommended verification of the home.

§749.2473. What must I do to verify a foster home that another child-placing agency has previously verified?

When a home has previously been verified by another agency, you may:

(1) Complete an entirely new screening and home study to comply with the requirements in §749.2471 of this title (relating to What must I do to verify a foster home?); or

(2) You may use the foster home screening and home study the previous child-placing agency conducted as a basis for meeting the requirement. You must update the information for every required section. You must describe any changes from the previous information. This verification will require you to:

(A) Conduct new interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);

(B) Conduct new criminal history and central registry background checks for foster home members, with results documented in the foster home record. Homes transferring from one agency to another, with children in care, may be verified by the receiving agency prior to completion of background checks;

(C) Document current fire and health inspections;

(D) Ensure that all family members have had tuberculosis testing in accordance with the recommendations of the local or regional Department of State Health Services;

(E) Ensure that the previous agency completed all investigations and addressed and resolved all deficiencies;

(F) Conduct a new evaluation of all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided; and

(G) Obtain review and approval of the screening, home study, and the recommended verification of the home by child placement management staff.

§749.2475. If another child-placing agency is requesting information regarding a parent that I previously conducted a foster or adoptive screening or home study on, must I release the information to the child-placing agency?

(a) If background information is requested by a child-placing agency conducting a foster or adoptive screening or home study, then you must release any background information you have acquired through previous foster or adoptive screening or home study.

(b) An agency must release the background information to the requesting agency within 10 days after receiving the written request.

(c) If there are any unresolved investigations or deficiencies related to the home, the agency must release the information within 10 days after the resolution of investigations or deficiencies.

§749.2477. May I verify a foster home prior to approval by child placement management staff?

No. Before you can verify a foster home, child placement management staff must:

(1) Review and approve the verification, including the documented foster home screening, home study, and other requirements; and

(2) Sign and date the document.

§749.2479. May I place children in a foster home before verifying the home?

No, you cannot place children in a foster home before completing the foster home screening and verification.

§749.2481. What type of certificate must a foster home have in order to prove verification?

(a) You must give the home a verification certificate after:

(1) Verifying the home; and

(2) Making any change that affects the verification certificate.

(b) The home must post the current verification certificate or have it immediately available upon request.

§749.2483. Do foster parent applicants have to own the home they live in for it to be their primary residence?

No, they do not have to own or rent the home they live in for it to be considered their primary residence.

§749.2485. What are the requirements for verifying a foster home at a residence that I own?

(a) You must verify the home in the name of one foster family for whom the home is the primary residence. You may only verify the home in the name of one foster family.

(b) A home is considered a primary residence if the person lives there on a routine basis and:

(1) It is the place of residence on their most recent tax return; or

(2) It is the address listed on their motor vehicle registration, driver's license, voter's registration, or other document filed with a public agency.

(c) Foster group homes verified before January 1, 2007, are exempt from the requirements in this rule.

§749.2487. What are the requirements for an agreement that I have with a foster home that I verify?

(a) You must sign a written agreement with each agency foster home at the time that you verify the home. You and the foster home must each have copies of the signed agreement. You must file a copy in the agency home record.

(b) The agreement must specify the following:

(1) The foster parents' responsibility for complying with rules of this chapter;

(2) The financial agreement between you and the foster home;

(3) The foster home agrees not to accept a non-relative child for 24-hour care from any source other than you;

(4) You have the right to remove the child from the home at your discretion;

(5) You must consent to any discharge of a child from the home;

(6) Visits by the child's parents or relatives must be arranged through you;

(7) You are responsible for regular supervision of the foster home;

(8) The foster parents' commitment to comply with your policies regarding child care, discipline, supervision of children, and children's visits or trips away from the foster home; and

(9) The foster parents' commitment to comply with your policies about foster parents' reports to you regarding foster children and events or occurrences impacting the provision of foster care.

§749.2489. What information must I submit to Licensing about a foster home's verification status?

You must submit information to us within two working days of:

(1) Verifying a new foster home;

(2) Temporary verification of a foster home and when the verification is not longer temporary;

(3) Putting a foster home on inactive status or taking a foster home off of inactive status;

(4) Changing conditions of the verification for an existing home; or

(5) Closing a foster home.

§749.2491. May I verify a foster home to provide different services?

(a) You may verify a foster home to provide different services as long as a child placement staff completes an assessment of the home that includes a review of the following:

(1) The number, ages, and needs of children to be placed in the home;

(2) The foster home's capacity to provide each different service and supervise all children appropriately;

(3) The needs of any children currently in the home; and

(4) The foster parents' experience and ability to provide service.

(b) The child placement staff must sign, date, and document this assessment in the foster home record. The different services permitted must be listed on the verification certificate.

(c) Child placement management staff must review and approve the documentation prior to the placement of a child. You must document the review and approval in the record.

(d) For each placement of a child into a home verified to provide multiple types of services, a child placement staff must ensure there will be no conflict of care. Examples of conflicts in care are placements that:

(1) Place one child at serious risk for harm by another child;

(2) Significantly compromise the care and supervision of any child in care;

(3) Require a level of expertise by the foster parents and/or caregivers that they do not possess; or

(4) Create an environment that is appropriately restrictive for one child but inappropriate for another.

(e) A child needing treatment services may only be placed in a foster home that is verified to provide the treatment services needed by that child. If the treatment service needs of any of the children in a foster home changes and the home is not verified to provide that particular treatment service, the foster parent must notify the child placement staff and a new assessment of the home must be completed, signed, and dated by the child placement management staff. If the foster home is not approved to provide the services after the assessment, then the child must be moved to a placement that can provide the needed services.

§749.2493. May a foster family provide day care in addition to foster care?

A foster home may provide day care in addition to foster care under the following conditions:

(1) The number and ages of children in both types of care must meet all relevant laws, including those listed in §745.375 of this title (relating to May I offer child day care at my agency foster home or independent foster home?);

(2) The caregivers can supervise all children appropriately, can meet all children's' needs, and can protect all children in both foster and day care;

(3) There is adequate space and there are adequate staff or caregivers to meet all applicable rules;

(4) The child-placing agency completes a written assessment, signed by child placement management staff, of the:

(A) Needs of the children in foster care and how the needs of the children in day care may impact the foster children; and

(B) Basis for determining no conflict of care exists in providing the two types of care; and

(5) Both the Residential Child-Care and Child Day-Care Divisions of Licensing approve.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601119

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. TEMPORARY VERIFICATION

40 TAC §§749.2521, 749.2523, 749.2525

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2521. What must I do prior to issuing a temporary verification?

(a) The purpose of a temporary verification is to permit continued care of foster children in a foster home when a foster family moves from one residence to another and there is a short-term delay in verification, for example, fire and health inspections cannot be obtained prior to the move.

(b) You may only issue a temporary verification after you:

(1) Inspect the new location;

(2) Determine that the home meets the minimum standards;

(3) Document that all health and safety, environment, and space and equipment standards are met; and

(4) The child placement management staff review and approve the temporary verification by signing and dating it.

(c) You may not use a temporary verification to change the verification conditions (number of children, age, gender, or services provided) of an agency home other than residence address.

(d) You may not issue a temporary verification if no children are in placement in the foster home.

§749.2523. For what length of time can I issue a temporary verification?

(a) You may issue a temporary verification for up to six months.

(b) A temporary verification is valid for no longer than six months from the date the verification is issued. You may not renew the temporary verification.

§749.2525. Can foster children remain in the foster home while a temporary verification is in effect?

Yes, children who were in the care of the foster family at the time of the move may continue to live in the foster home while the temporary verification is in effect. However, you may not make new placements of children into a home that is temporarily verified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601120

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

40 TAC §§749.2551, 749.2553, 749.2555, 749.2557, 749.2559, 749.2561, 749.2563, 749.2565, 749.2567

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2551. What is the maximum number of children a foster family home may care for?

(a) A foster family home may care for up to six children, including the biological and adopted children of the foster family, children receiving foster respite care, and children for whom the family provides day care.

(b) All adults in care must also be counted in the capacity of the home per §749.2651 of this title (relating to May a foster home accept adults into the home for care?).

§749.2553. What is the maximum number of children that a foster group home may care for?

(a) A foster group home may care for up to 12 children, including the biological and adopted children of the foster family and children receiving foster or respite care.

(b) All adults in care must also be counted in the capacity of the home as specified in §749.2651 of this title (relating to May a foster home accept adults into the home for care?).

§749.2555. How do I determine capacity?

Capacity of the home is based on the:

(1) Services being provided, the number of caregivers, and the age of the children in the home and in placement; and

(2) Amount of space available for children and the needs of the children in care.

§749.2557. May a foster agency home exceed its verified capacity?

No. The maximum number of children in a foster home, including the biological and adopted children of the foster family, any children receiving foster or respite care, and children for whom the family provides day care, must not exceed the capacity stated on the home's verification.

§749.2559. How do I determine the child/caregiver ratio for a foster family home?

The number of children one caregiver may supervise in a foster family home is six, unless the home meets one of the criteria in the chart below: Figure: 40 TAC §749.2559

§749.2561. How many infants may a foster family home care for?

(a) A foster family home may only care for two infants at the same time unless you place more than two infants in a home in order to keep a single sibling group together.

(b) If the home cares for two infants or more according to subsection (a) of this section, it can only care for two additional children under six years of age.

(c) These restrictions include the biological and adopted children of the foster family, children in foster or respite care, and children for whom the family provides day care.

§749.2563. How do I determine child/caregiver ratio for a foster group home?

The number of children one caregiver may supervise in a foster group home is eight, unless the home meets one of the criteria in the chart below:

Figure: 40 TAC §749.2563

§749.2565. Are there restrictions on placing a child younger than five years old in a foster group home?

Yes, you:

(1) May only place a child who is younger than five years old in a foster group home if you determine that:

(A) The placement is necessary to maintain a sibling group; and

(B) A less restrictive setting cannot meet the needs of the sibling group.

(2) You must document your decision in the child's record.

§749.2567. Must a home maintain the child/caregiver ratio at all times?

No. However, even during a time that all children in care are away from the home, at least one caregiver must be available by phone to:

(1) Respond to emergencies, changes in schedules, or unplanned events; and

(2) Provide care and supervision whenever a child needs the attention of a caregiver, including when the child returns to the home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601121

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. SUPERVISION

40 TAC §§749.2591, 749.2593, 749.2595, 749.2597, 749.2599

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2591. How am I responsible for ensuring adequate supervision of children in care?

(a) Your child placement management staff must ensure that supervision of children in care adequately accounts for the following:

- (1) Specific needs of the children in care in each home;
- (2) Non-routine events taking place in the lives of individual children, the foster parents, or the group of children in care; and
- (3) The children's history, including background of abuse or neglect by caretakers, sexual or physical abuse against others, fire-setting, maiming or killing animals, suicide attempts, and run-away behaviors.

(b) Your child placement management staff must also approve a written plan for the increased supervision of a child who presents an immediate harm to himself or others.

§749.2593. What responsibilities does a caregiver have when supervising a child?

(a) The caregiver is responsible for:

- (1) Knowing which children they are responsible for;
- (2) Being aware of and accountable for each child's on-going activity;
- (3) Directing each child's activities or actions;
- (4) Overseeing each child's activities or actions;
- (5) Providing the level of supervision necessary to ensure each child's safety and well being, including auditory and visual awareness of each child's on-going activity as appropriate;
- (6) Being able to intervene when necessary to ensure each child's safety; and
- (7) Not performing tasks that clearly impede the caregiver's ability to supervise and interact with the children while being responsible for the supervision of the children and meet any service-planning requirement regarding supervision of any child.

(b) In deciding how closely to supervise a child, the caregiver must take into account:

- (1) The child's age;
- (2) The child's individual differences and abilities;
- (3) The indoor and outdoor layout of the home;
- (4) Surrounding circumstances, hazards, and risks; and
- (5) The child's needs, including the physical, mental, emotional, and social.

(c) Caregivers counted in the child/caregiver ratio must:

- (1) Be aware of the children's habits, interests, and any special needs;
- (2) Maintain a safe and contained environment;
- (3) Cultivate developmentally appropriate independence in children through planned but flexible program activities;
- (4) Positively reinforce children's efforts and accomplishments;
- (5) Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written information or instructions given by the parent or other professionals; and
- (6) Implement and follow the children's service plans.

(d) Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

§749.2595. May I use a video camera to supervise a child in the child's bedroom?

(a) Video cameras may be used to supervise infants and toddlers.

(b) Video cameras may not be used to supervise other children, except infants and toddlers, unless the:

(1) Parent, or other person legally authorized to consent, consents to the use of the video camera; and

(2) Child:

(A) Is younger than five years old;

(B) Has primary medical needs; or

(C) Has a service plan that permits the use for purposes of a documented history of sexually offensive behavior. You must document the justification for the video camera in the child's service plan.

§749.2597. Where must the caregivers reside in order to supervise children who are in a transitional living program?

Caregivers counted in the child/caregiver ratio and responsible for supervising children in a transitional living program must:

(1) Reside within close physical proximity of the child's living quarters;

(2) Be physically available to the children at all times;

(3) Be capable of responding quickly in an emergency; and

(4) Be capable of monitoring the comings and goings of the children in the program.

§749.2599. Can a child serve as a caregiver?

A child who is over the age of 16 may serve as a caregiver for foster care children under the age of 13 as long as:

(1) The child placement management staff approves the child to be a caregiver, establishing limits with duration and frequency;

(2) The child acts as a caregiver for no more than eight hours and never over night;

(3) The child is certified in first aid and CPR; and

(4) Neither the child nor any of the foster children is supervising or receiving treatment services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601122

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 7. RESPITE CHILD-CARE SERVICES

40 TAC §§749.2621, 749.2623, 749.2625, 749.2627, 749.2629, 749.2631, 749.2633, 749.2635

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2621. What is "respite child-care"?

(a) Respite child-care is a planned alternative 24-hour care that has the purpose of providing relief to the child's primary caregiver.

(b) For the purposes of this chapter, respite care placement is a placement that lasts more than 72 hours. The placement of a child in a home for less than 72 hours is not respite care.

§749.2623. What must occur before I place a child for respite care?

You must notify the child's parent before placing the child in respite care.

§749.2625. What information regarding the child must I share with the respite care provider?

To ensure continuity of care, you must share the following information with the respite care provider before placing the child in the home:

(1) Specific needs of a child, including:

(A) All psychiatric or medical treatment currently being provided;

(B) Medication regimen and medication instructions;

(C) Authorization for medical treatment; and

(D) Any expectations of the respite caregiver;

(2) Non-routine events taking place in the life of the child;

(3) Emergency contact information, including the:

(A) Child's physician(s);

(B) Child's parent; and

(C) Agency's telephone number; and

(4) The child's history that may affect the provider's ability to provide care for the child, including:

(A) Background of abuse and/or neglect;

(B) Sexually aggressive and/or physically abusive behavior;

(C) Fire setting;

(D) Maiming or killing animals;

(E) Suicidal ideations and attempts; and

(F) Run-away behaviors.

§749.2627. What must occur before one of my foster homes accepts a child for respite care?

(a) You must approve each occurrence of respite care in your homes. Respite care must not be used if it could be detrimental to the child.

(b) Your child placement management staff must determine that the respite placement will not cause a conflict in care for any child that you have already placed in the foster home. The record of the foster home providing foster care must include documentation of this determination.

§749.2629. In addition to the requirements of this division, what requirements of this chapter apply to respite care that a foster home provides?

You and the foster home providing respite care must meet all requirements of the applicable rules of this chapter for all children in care, including children admitted for respite care. This includes compliance with capacity and child/caregiver ratios and supervision rules.

§749.2631. How long may a child be in respite care?

(a) A child may be in respite care up to 14 consecutive days. If the child is in care for more than 14 days, it is a new placement.

(b) A child may be in respite care up to 40 days each year.

(c) When a child finishes a respite care placement, he may not return to respite care for at least 10 days.

§749.2633. How frequently may a foster home provide respite care services?

(a) The home may not provide respite care services for more than:

(1) 14 consecutive days; or

(2) 60 days annually.

(b) There must be at least a 10-day period between the completion of one occurrence of respite care at the home and the beginning of the next occurrence at the home.

(c) This rule does not apply to foster homes that exclusively provide respite care.

§749.2635. May I place a child for respite care in a home that Licensing does not regulate?

You may place a child for respite care in a home that meets the requirements of the exemption set forth in §745.117(6) of this title (relating to Which programs of limited duration are exempt from Licensing regulation?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601123

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

DIVISION 8. AGENCY-FOSTER FAMILY RELATIONSHIPS

40 TAC §§749.2651, 749.2653, 749.2655

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2651. May a foster home accept adults into the home for care?

(a) Yes. Foster homes may accept adults into the home for care if the:

- (1) Adult is related to the foster family;
- (2) Adult is a client in the Department of Aging and Disability Services, Community Based Services Program; and
- (3) Young adult is:
 - (A) Transferring from another residential child-care operation; or
 - (B) Joining a minor sibling in your care.

(b) Adults in care must be counted in the capacity of the home.

§749.2653. What are the requirements for an unrelated adult to reside in a foster home?

(a) Before a foster home may add a new member to the household:

- (1) The home must notify you of the potential new member of the household;
- (2) The home must comply with requirements specified in Subchapter F of Chapter 745 of this title (relating to Background Checks) and §749.609 of this title (relating to What are the requirements for tuberculosis testing?); and
- (3) You must evaluate the effect that the adult will have on the foster children in the home. Your evaluation must include the following considerations:

- (A) The needs of the foster children in care;
- (B) The impact the adult will have in the foster family and for the foster children; and
- (C) Whether the change in household will conflict with the children's best interest.

(b) You must document the following in the foster home record:

- (1) The results of the background check and the tuberculosis test;
- (2) Your evaluation; and
- (3) The approval of the child placement management staff.

§749.2655. When must a foster home notify you of changes that affect the foster home?

A foster home must notify you of any of the following changes as follows:

Figure: 40 TAC §749.2655

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601124

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §§749.2801, 749.2803, 749.2805, 749.2807, 749.2809, 749.2811, 749.2813, 749.2815, 749.2817, 749.2819, 749.2821, 749.2823, 749.2825

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2801. When must I evaluate a foster home for compliance with Licensing rules?

(a) You must evaluate a foster home for compliance with the relevant Licensing rules affecting the need for the evaluation, whenever:

- (1) You receive an allegation of deficiency;
- (2) There is a major life change in the foster family; or
- (3) A change occurs that affects the conditions of the verification.

(b) Every two years you must evaluate a foster home for compliance with all rules that apply to that home.

§749.2803. What changes affect the conditions of a foster home's verification?

Changes that affect the conditions of a foster home's verification include a change in:

- (1) Family residence;
- (2) The number, ages, or gender of children for which the home is verified;
- (3) The type of care the foster family will provide;
- (4) The name of the foster family; or
- (5) The composition of the family.

§749.2805. What is a "major life change in the foster family"?

A major life change in the foster family includes:

- (1) Marriage, divorce, separation, death, birth, or any other change in household composition;
- (2) A serious health problem that affects the ability of the foster parent to care for children; or
- (3) Extended absences by one parent, such as military service or out-of-town job assignments.

§749.2807. How do I evaluate a foster home's compliance with the relevant Licensing rules affecting the need for the evaluation?

You are responsible for the home's ongoing compliance with our rules. You must evaluate the home as follows:

- (1) When there is an allegation of a deficiency, you must evaluate the rule and any rules related to the deficiency;
- (2) When a change in the conditions of the verification or a major life change occurs, you must evaluate the rules related to the conditions or change;
- (3) You must document the rules that were evaluated and the determination of the evaluation;
- (4) During any contact with the foster family, including routine supervisory contacts and investigations, you must cite and address any deficiencies noted;
- (5) Your documentation of deficiencies must include plans for achieving compliance; and
- (6) You must also document a plan for follow-up to ensure compliance was achieved.

§749.2809. What must a plan for achieving compliance include?

The plan for achieving compliance must include:

- (1) Specific actions or changes needed for the foster home to achieve compliance;
- (2) Time frames for corrections and consequences for failure to achieve compliance;
- (3) A determination of whether children can remain in the foster home before the home achieves compliance; and
- (4) A determination whether you will make new placements in the home before the home achieves compliance.

§749.2811. How do I follow-up to ensure compliance?

You must:

- (1) Re-inspect the foster home or receive documentation from the home showing that all deficiencies have been corrected; and
- (2) Document that the foster home has corrected all deficiencies in the foster home's record.

§749.2813. How do I evaluate Licensing rules for each home every two years?

You may either:

- (1) Perform a rule-by-rule evaluation of the home once every two years; or
- (2) Evaluate different parts of the rules at different times during the two-year period.

§749.2815. How often must I have supervisory contacts with the foster home?

- (a) You must have supervisory contacts with:

- (1) The foster home at least quarterly;
- (2) Both foster parents, if applicable, at least once every six months; and
- (3) All household members at least once every year.

- (b) At least one supervisory contact per year must be unannounced.

(c) You must document each contact in the home's record. The documentation must include specific rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, and plans for follow-up to ensure compliance was achieved.

§749.2817. Must I monitor and have supervisory contacts with a foster home where no children are placed?

- (a) You must maintain all monitoring and supervisory requirements if the home is available for placements.

- (b) If you place the home on inactive status, you do not have to monitor the home or have supervisory contacts.

§749.2819. When may I place a foster home on inactive status?

- (a) You may place a foster home on inactive status if:

- (1) There are no foster children in the home;
- (2) You and the foster parents agree that the home will be on inactive status; and

- (3) You document in the home's record that the home is on inactive status and will not accept a child for placement.

- (b) You may not place a home that you should close on inactive status. A home that you should close includes a home:

- (1) Whose repeated noncompliance with rules endangers the health or safety of children;

- (2) That repeatedly fails to comply with agency policies or corrective action plans;

- (3) That refuses to comply with the rules of this chapter or agency policies; or

- (4) That refuses to allow you or our staff to inspect the home.

- (c) When you place a home on inactive status or remove a home from inactive status, you must inform us by submitting an agency home report form.

§749.2821. How do the foster parents meet their training requirements while their home is on inactive status?

- (a) Foster parents may prorate their annual training requirement for the period of time that the home was on inactive status.

- (b) If the home remains on inactive status for more than a year, the foster parents must complete at least eight hours of pre-service retraining before you may place children in the home.

§749.2823. Are background checks required on homes that are on inactive status?

Background checks are not required for homes that are on inactive status. However, the home must submit background check requests before you can take a foster home off inactive status and place children back in the home.

§749.2825. How do I take a foster home off inactive status?

When the home is ready to become active and accept children, you must:

- (1) Make a supervisory contact in the home prior to placing a child in the home;

(2) Document that the home is complying with all applicable rules of this chapter; and

(3) Ensure that the home is in compliance with all background check requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601125

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 1. HEALTH AND SAFETY

**40 TAC §§749.2901, 749.2903, 749.2905, 749.2907,
749.2909, 749.2911, 749.2913, 749.2915, 749.2917**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2901. What health and safety regulations must each foster home meet in addition to Licensing rules?

All agency homes must comply with all applicable fire, health, and safety laws, ordinances, and regulations.

§749.2903. Who must conduct fire and health inspections at a foster home?

(a) You must explore all available resources, city, county, and local governments to determine whether there is any local authority to conduct health and fire inspections. You must document all contacts with the date, name of person contacted, and the person's response to the request to complete an inspection.

(b) If no local authority exists to complete a fire inspection for the home, you must request the state Fire Marshal's Office to do the inspection. If no local authority exists to complete a health inspection for the home, you must request a health inspection from the Department of State Health Services.

(c) If, after exploring and documenting all efforts to obtain a local or state fire inspection, you cannot obtain a fire inspection, you may use our Fire Prevention Checklist form.

(d) If, after exploring and documenting all efforts to obtain a local or state health inspection for the home, you may use our Environmental Health Checklist form.

§749.2905. How often must a health or fire inspection be conducted at a foster home?

(a) Unless otherwise stated in the report, a health or fire inspection report obtained from a local or state fire or health authority is current for:

(1) One year for a foster group home; and

(2) Two years for a foster family home.

(b) If the home uses a DFPS checklist, the checklist is current for one year.

(c) If the home was unable to obtain an inspection from state or local authorities, the home must contact the authorities annually as to whether they remain unable to conduct inspections. The home must document the date, name of the person contacted, and the person's response to your inquiry. You must keep this documentation on file in each foster home record to which the inquiry applies.

§749.2907. What disaster and emergency plans must each foster home have?

(a) Each foster home must have written plans and procedures for handling potential disasters and emergencies, such as fire, severe weather emergencies, and transportation emergencies.

(b) Foster parents and caregivers must know the procedures for meeting disasters and emergencies, including evacuation procedures, supervision of the children, and contacting emergency help.

§749.2909. How many smoke detectors must a foster home have?

(a) Each home must have a working smoke detector in the following areas:

(1) In hallways or open areas outside sleeping rooms; and

(2) On each level of a home with multiple levels.

(b) Depending on the size and layout of the home, additional smoke detectors may be required based on manufacturer's or fire marshal's instructions.

§749.2911. How must smoke detectors be installed and maintained at a foster home?

(a) Smoke detectors must be installed and maintained according to the manufacturer's instructions, or in compliance with the state or local fire marshal's instructions.

(b) Batteries must be changed annually or sooner as required to maintain operable smoke detector units.

§749.2913. How many fire extinguishers must a foster home have?

(a) A foster home must have a fire extinguisher:

(1) In each kitchen; and

(2) On each level of the home.

(b) The fire extinguisher(s) must be:

(1) Serviced after each use; and

(2) Checked for proper weight at least once a year.

§749.2915. Where must a foster home store dangerous tools and equipment?

A foster home must store dangerous tools and equipment, such as hatchets, saws, and axes, so they are inaccessible to children.

§749.2917. What are the requirements for animals that are present at a foster home?

(a) Caregivers must keep the home and premises free of stray animals. If the foster home chooses to have animals on the premises, it must ensure the animals do not create health problems or health risk for children, such as allergic reactions or the spread of disease through direct or indirect means.

(b) The foster home must not allow children to play with stray animals or other animals that could be dangerous.

(c) Any animals on the premises of a home must be kept free of disease. Animals must be vaccinated and treated as recommended by a licensed veterinarian. The caregivers must have documentation at the home showing that dogs, cats, and ferrets have been vaccinated as required by Texas Health and Safety Code, Chapter 826.

(d) All animals on the premises, including pets and livestock, must be treated according to a licensed veterinarian's recommendations to protect the health and safety of children.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601126

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. TOBACCO USE

40 TAC §749.2931

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.2931. What policies must I enforce regarding tobacco products?

(a) A child may not use or possess tobacco products.

(b) Caregivers and other adults may only use tobacco products outside.

(c) No one may use tobacco products in a motor vehicle while transporting children in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601127

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

40 TAC §§749.2961, 749.2963, 749.2965, 749.2967

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.2961. Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) Weapons, firearms, explosive materials, and projectiles are not permitted at a foster home providing treatment services;

(2) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop policies identifying specific precautions to ensure children do not have unsupervised access to them, including locked storage and separate locked storage for the weapons and ammunition;

(3) You must determine it is appropriate for a child receiving only child-care services to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and

(4) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by a caregiver.

(b) Your policies must require foster parents to notify you if there is a change in the type of or an addition to weapons, firearms, explosive materials, or projectiles.

§749.2963. What factors must I consider when determining whether weapons, firearms, explosive materials, or projectiles are stored adequately?

When determining if these items are stored adequately, you must consider the age, history, emotional maturity, and background of the children in the home.

§749.2965. How must I determine whether weapons, firearms, explosive materials, or projectiles are present in a foster home?

(a) When you complete a foster home screening, you must ask whether weapons, firearms, explosive materials, or projectiles are

present in the home. If these items are present, you must review your policies and requirements with the prospective foster parents.

(b) The foster home record must include documentation on the:

(1) Items present in the home; and

(2) Specific precautions the caregivers must take to ensure that children do not have unsupervised access.

(c) The two-year evaluation of compliance with rules of this chapter must include a discussion of whether the home has weapons, firearms, explosive materials, or projectiles, and if so, how these items are stored.

§749.2967. May a caregiver transport a child in a vehicle where weapons, firearms, explosive materials, or projectiles are present?

A caregiver may not transport a child in a vehicle where a handgun is present. Otherwise, a caregiver may transport a child in a vehicle where firearms, explosive materials, or projectiles are present if:

(1) The child is only receiving child-care services;

(2) All firearms are not loaded; and

(3) Weapons, firearms, explosive materials, or projectiles are inaccessible to the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601128

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. SPACE AND EQUIPMENT

40 TAC §§749.3021, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3033, 749.3035, 749.3037, 749.3039, 749.3041

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3021. How much space must bedrooms used by foster children have?

(a) A bedroom must have at least 40 square feet of space for each occupant and no more than four occupants per bedroom are permitted, even if the square footage of the room would accommodate

more than four occupants. The four occupants restriction does not apply to children receiving treatment services for primary medical needs.

(b) Single occupant bedrooms must have at least 80 square feet of floor space.

(c) The floor space requirement must not include closets or other alcoves.

(d) Floor space must be space that children can use for daily activities.

(e) If prior to January 1, 2007, we granted you a verification, then you are exempt from the maximum bedroom occupancy requirement until:

(1) You move to a new home;

(2) You structurally alter the current home by adding a new room; or

(3) Your verification is no longer valid.

§749.3023. Which rooms in the home may not be used as bedrooms?

(a) Only rooms that provide adequate opportunities for rest and privacy may be used as a bedroom.

(b) Foster children or any other household members may not use any of the following as a bedroom:

(1) A room commonly used for other purposes, including dining rooms, living rooms, hallways, or porches;

(2) A passageway to other rooms;

(3) A room that does not have doors for privacy; or

(4) A detached structure.

(c) A foster child may use a basement as a bedroom if there is:

(1) A second fire escape route from the basement; and

(2) Natural lighting.

(d) A foster child may not use a basement as a bedroom if there is no natural lighting:

(1) Unless you verified the home prior to January 1, 2007; and

(2) Until the verification is no longer valid, or the home is structurally altered through the addition of a new room.

§749.3025. May a resident in care who turns 18 years old share a bedroom with a minor?

(a) Before an adult resident who has turned 18 years old while placed in his current foster home can share a bedroom with a minor resident, you must assess the behaviors, maturity level, and relationships of each resident to determine whether there are risks to either the minor or adult in care.

(b) You must document your assessment in each resident's record.

§749.3027. May a child in care share a bedroom with an adult caregiver?

(a) A child may share a bedroom with an adult caregiver if:

(1) In the best interest of the child;

(2) The child is under three years old and sleeps in the bedroom of the caregiver; and

(3) Approval is documented and dated in the child's service plan by the service planning team.

(b) An exception for a child to share a bedroom with an adult caregiver may be made during specific travel and camping situations if no other more reasonable provision is available to the child and other requirements are met.

(c) To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to himself or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

§749.3029. Can children of opposite sex share a bedroom?
Children six years old or older must not share a bedroom with a person of the opposite sex.

§749.3031. What are the requirements for beds and bedding?

(a) Each child shall have his own bed and mattress.

(b) Beds must be clean and comfortable.

(c) Mattresses must have covers or protectors.

(d) Linens must be changed when soiled, and not less often than once a week.

§749.3033. What type of personal storage space must a foster child have?

Each child must have accessible storage space for his clothing and personal possessions.

§749.3035. What bathroom accommodations must a home have?

(a) A foster home must have one lavatory, one tub or shower, and one toilet for every eight household members. A foster home verified before January 1, 2007, is exempt from this requirement until it is no longer verified by the agency under which it is currently verified, or it makes structural changes to the home by adding additional bathrooms.

(b) All lavatories, tubs, and showers must have hot and cold running water.

(c) For foster homes that care for primary medical needs children, the caregiver and the child's bathroom must be located on the same floor. A foster home verified before January 1, 2007, is exempt from this requirement until it is no longer verified by the agency.

(d) Bathrooms must be thoroughly cleaned daily.

(e) Bathrooms must allow for privacy.

§749.3037. What are the requirements for indoor space that children can use?

(a) Children must have indoor areas for their use. There must be at least 40 square feet for each child. This does not include bedrooms, kitchens, bathrooms, utility rooms, unfinished attics, or hallways.

(b) A foster home must identify indoor areas that children can use.

(c) You must approve the indoor space that a home designates for the children's use.

§749.3039. What are the requirements for outdoor recreation space and equipment?

(a) Outdoor activity areas must be arranged so that caregivers can supervise activities.

(b) Equipment must not have openings, angles, or protrusions that can entangle a child's clothing or entrap a child's body or body parts.

(c) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning.

(d) Equipment must not be installed over asphalt or concrete.

(e) Equipment must be appropriate, cleaned, maintained, and repaired.

(f) Trampolines may not be used as play or recreational equipment.

§749.3041. What are the requirements for a foster home's physical environment?

The foster home must ensure that:

(1) Outdoor areas are well drained;

(2) Windows and doors used for ventilation are screened;

(3) Equipment and furniture are safe for children, kept clean, and in good repair;

(4) Flammable or poisonous substances are stored out of the reach of children;

(5) House and grounds are free of rodents, insects, and stray animals; and

(6) Exits in living areas are not blocked by furniture.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601129

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. NUTRITION AND FOOD PREPARATION

40 TAC §§749.3061, 749.3063, 749.3065, 749.3067, 749.3069, 749.3071, 749.3073, 749.3075, 749.3077, 749.3079, 749.3081

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3061. What are the requirements for feeding children in care?

(a) Caregivers must give children food of adequate quality and in sufficient quantity to supply the nutrients necessary for proper growth and development.

(b) Caregivers must feed an infant whenever the infant is hungry.

(c) Caregivers must provide a toddler or school age child with three meals and at least one snack a day.

(d) No more than 14 hours may pass between the last meal or snack of the day and the serving of the first meal of the following day.

§749.3063. What types of food and water must caregivers provide children?

(a) Caregivers must provide a child with food that is:

(1) Of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development according to the United States Department of Agriculture guidelines; and

(2) Appropriate for the child's age and activity level.

(b) Caregivers must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances to a child without written instructions from a licensed health-care professional.

(c) Caregivers must ensure drinking water is always available to each child and is served in a safe and sanitary manner. Children must be well hydrated and must be encouraged to drink water during physical activity and in warm weather.

§749.3065. What must the caregiver do if a child refuses to or cannot eat a meal or snack that is offered?

(a) The caregiver must offer a child a meal or snack according to this division, but the caregiver may not force the child to eat. The caregiver does not have to offer other food to a child who:

(1) Refuses a meal or snack; or

(2) Chooses not to be present when a meal or snack is scheduled.

(b) The caregiver must discuss recurring eating problems with child placement staff and the child's parent.

(c) If a meal or snack is not appropriate to meet a child's individual needs, for example food allergies or religious reasons, then you must offer the child an appropriate nutritional substitute.

§749.3067. May a caregiver use food as a reward or punishment or as part of any behavior management program?

A caregiver may not use food that meets a child's nutritional requirements as a reward or punishment or as part of a behavior management program. Food cannot be withheld.

§749.3069. May caregivers offer a child in care different food choices than what the family is eating?

No, the caregiver must offer the child in care the same food choices that the family is eating.

§749.3071. What must I do if a child requires a therapeutic or special diet?

(a) For a caregiver to serve a therapeutic or special diet to a child, you must have written approval in the child's record from a licensed physician or a registered or licensed dietitian. This approval must be in the child's record.

(b) If a child requires a therapeutic or special diet, you must give information regarding the diet to the child's caregivers.

(c) Caregivers must make dietary alternatives available to a child who has special health needs as instructed by a licensed health-care professional.

§749.3073. What are the nutrition requirements for a child with primary medical needs?

(a) Caregivers must feed a child with primary medical needs according to his medical and developmental needs.

(b) A licensed physician must prescribe tube feeding. A dietitian must plan the diet that the physician prescribes.

(c) Children must eat in an upright position unless the service planning team's recommendations are to the contrary.

§749.3075. What food service practices must caregivers use for children with primary medical needs?

(a) Food service practices for children with primary medical needs, including non-mobile children, must encourage self-help and development.

(b) Children must eat or be fed in the dining area, unless the service planning team's recommendations are to the contrary.

(c) Infants must be held during feedings, unless the service planning team's recommendations are to the contrary.

§749.3077. What are the requirements for tube-feeding formula?

(a) A registered licensed dietitian or a registered nurse must ensure and document that the caregiver responsible for formula preparation is adequately trained to prepare the formula.

(b) Tube-feeding formulas must supply the recommended dietary allowance for each child.

(c) Caregivers must:

(1) Prepare the formula no more than 24-hours before feeding; and

(2) Store it in bacteriologically safe, sanitized, and covered containers unless the tube-feeding formula is prepared immediately before administration.

(d) Tube-feeding formula must be maintained at less than 40 degrees Fahrenheit or as instructed in manufacturer directions.

§749.3079. What are the requirements for storing food?

All food items must be:

(1) Covered and stored off the floor;

(2) Stored on clean surfaces;

(3) Be protected from contamination;

(4) Stored in a container that is protected from insects and rodents;

(5) Refrigerated immediately after use and after meals, if the food requires refrigeration; and

(6) Covered when stored in the refrigerator.

§749.3081. How must kitchen, dining areas, supplies, and equipment be maintained?

(a) Caregivers must keep furniture, equipment, food contact surfaces, and other areas where food is prepared, eaten, or stored clean and well repaired.

(b) Utensils and containers intended for one-time use, such as paper and plastic dishes, must not be used more than once.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601130

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. TRANSPORTATION

40 TAC §§749.3101, 749.3103, 749.3105, 749.3107, 749.3109, 749.3111

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3101. What are the requirements for the vehicles used to transport foster children?

Vehicles used to transport foster children must be:

- (1) Maintained in safe operating conditions at all times; and
- (2) Inspected and registered according to federal, state, and

local laws.

§749.3103. What are the requirements for transporting foster children?

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of child passenger safety systems, seat belts, and liability insurance.

§749.3105. May children transport other foster children?

Other children in the foster home may transport a foster child if the:

- (1) Child driving has a valid drivers license; and
- (2) Service planning teams for the foster children being transported and the foster child transporting, if applicable, approve of the transportation arrangements.

§749.3107. May caregivers teach or supervise foster children in learning to drive?

(a) With your approval, caregivers may teach or supervise foster children in learning to drive. You must document your approval in the child's record.

(b) Only the caregiver responsible for instruction and the child learning to drive may be present in the vehicle.

§749.3109. What are the special requirements for transporting a child who requires increased supervision or is non-ambulatory or non-mobile?

(a) A sufficient number of caregivers to meet the child's needs must accompany the child.

(b) Special provision(s) must be made for transporting non-ambulatory and non-mobile children. When necessary, this must include locks for wheelchairs and hydraulic lifts.

§749.3111. Do the seat belt requirements prohibit transporting children in the bed of a pick-up truck or other parts of the vehicle on the foster parents' property or public roads?

Yes. Children must be inside the vehicle when transported. The back of a pick-up truck is not considered inside the vehicle. Children must never be transported in the bed of a pick-up truck, while standing on runners, or while on the hood or trunk of any vehicle.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601131

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

40 TAC §§749.3131, 749.3133, 749.3135, 749.3137, 749.3139, 749.3141, 749.3143, 749.3145, 749.3147, 749.3149

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3131. Who is responsible for complying with the requirements in this subchapter?

These requirements only apply to homes that are providing foster care services. This includes foster homes also approved as adoptive homes, but does not include adoptive homes only approved for adoption.

§749.3133. What are the requirements for a pool at a foster home?

(a) The caregivers must inform children about house rules for use of the pool and appropriate safety precautions. Adult supervision and monitoring of safety features must be adequate to protect children from unsupervised access to the pool.

(b) The swimming pool must be built and maintained according to the standards of the Department of State Health Services and any other applicable state or local regulations.

(c) A fence that is at least four feet high must enclose the pool area. The fence must be well constructed and be installed completely

around the pool area. A foster home that you verified before January 1, 2007, has one year from that date to comply with this requirement. Caregivers must continue to prevent children's unsupervised access to the pool.

(d) Fence gates leading to the outdoor pool area must be self-closing and self-latching. Gates must be locked when the pool is not in use. Keys to open the gate must not be accessible to children under the age of 16 years old or children receiving treatment services.

(e) Doors that lead from the home to the pool area must have a lock that only adults or children over 10 years old can reach. The lock must be completely out of the reach of children younger than 10 years old.

(f) Furniture, equipment, or large materials must not be close enough to the pool area for a child to use them to scale the fence or release a lock.

(g) At least two life-saving devices must be available, such as a reach pole, backboard, buoy, or a safety throw bag with a brightly colored buoyant rope or throw line. One additional life-saving device must be available for each 2,000 square feet of water surface, so a pool of 2,000 square feet would require three life saving devices.

(h) Drain grates must be in place, in good repair, and capable of being removed only with tools.

(i) Caregivers must be able to clearly see all parts of the swimming area when supervising activity in the area.

(j) The bottom of the pool must be visible at all times.

(k) Pool covers must be completely removed prior to pool use.

(l) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in the pool.

(m) Pool chemicals and pumps must be inaccessible to all children.

(n) Machinery rooms must be locked to keep children out.

(o) An aboveground pool must:

(1) Have a barrier that prevents a child's access to the pool;

(2) Be inaccessible to children when it is not in use; and

(3) Meet all other pool safety requirements specified in this subchapter.

§749.3135. What general requirements must caregivers meet for children regarding a body of water?

(a) Caregivers must use prudent judgment and ensure children in your care are protected from unsupervised access to water such as a swimming pool, hot tub, fountain, pond, lake, creek, or other body of water.

(b) If children are allowed to swim in a body of water such as a river, creek, pond, or lake, the supervising adult must clearly designate swimming areas.

(c) Rules governing the activity must be explained to participants in a manner that is clearly understood prior to their participation.

§749.3137. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §749.3137(a)

(b) In addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, if four or more children are engaged in swimming activities, then there must be at least two adults to supervise the children.

(c) When a child who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to the lifeguard on duty and the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear an approved life jacket while swimming and additional special precautions are not needed.

§749.3139. May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?

To meet the swimming child/adult ratio, you may include adult volunteers and adult relatives who do not meet the minimum qualifications for caregivers, providing:

(1) You maintain enough caregivers to meet the child/caregiver ratio required in Subchapter M, Division 5 of this chapter (relating to Capacity and Child/Caregiver Ratio);

(2) Children in your care do not supervise water activities; and

(3) You ensure compliance with all other rules of this chapter, including, but not limited to, rules relating to supervision and discipline.

§749.3141. When must a child wear a life jacket?

A child must wear a life jacket when:

(1) Participating in boating activities;

(2) The child is in more than two feet of water and does not know how to swim; or

(3) Ordered by a physician for a child with a medical problem or disability.

§749.3143. Must persons who are counted in the swimming child/adult ratio know how to swim and carry out a water rescue?

At all times during a swimming activity, at least one adult counted in the swimming child/adult ratio must be able to swim, carry out a water rescue, and be prepared to do so in an emergency.

§749.3145. What are the safety requirements for wading pools?

Wading/splashing pools (less than two feet of water) must be:

(1) Stored out of children's reach, when not in use;

(2) Drained at least daily and sanitized; and

(3) Stored, so it does not hold water.

§749.3147. What are the requirements for a hot tub?

A hot tub must be covered with a locking cover when not in use.

§749.3149. What must I document regarding a body of water that is on or adjacent and accessible to the premises of a foster home?

You must document the following regarding a body of water that is on or adjacent and accessible to the premises of a foster home:

(1) Type, location, and size of the body of water; and

(2) Barriers between the foster home and the body of water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601132

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER P. FOSTER-ADOPTIVE HOMES AND LEGAL RISK PLACEMENTS

DIVISION 1. VERIFICATION OF FOSTER-ADOPTIVE HOMES

40 TAC §749.3201, §749.3203

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3201. May I verify the same applicant as a foster family home and an adoptive placement at the same time?

Yes. You may approve applicants as a foster-adoptive home.

§749.3203. What rules must I follow to verify a foster-adoptive home?

(a) You must follow all rules for verifying a foster family home and for approving an adoptive home.

(b) You may combine the foster home screening and pre-adoptive home screening into one screening report as long as requirements for each screening are covered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601133

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. LEGAL RISK PLACEMENTS

40 TAC §749.3221

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.3221. What is a "legal risk placement"?

(a) A "legal risk placement" exists when you:

(1) Have a child that is not available for adoption because his parent(s)' rights have not been terminated;

(2) Have placed a child into a home that has been jointly verified as a foster home and approved as an adoptive home; and

(3) Intend for the placement to change from foster care to adoption once the child is eligible for adoption.

(b) A "legal risk placement" does not exist when you merely place a child with foster parents who want to adopt the child but have not been approved as an adoptive home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601134

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN

DIVISION 1. CONSENT

40 TAC §749.3301

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.3301. What legal authority must I have to place a child in adoptive care?

To place a child in adoptive care, you must have an agreement signed by the person legally authorized to consent to the child's placement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601135

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADOPTION SERVICE PLAN

40 TAC §§749.3321, 749.3323, 749.3325, 749.3327

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3321. When must I initiate and complete the adoption service plan?

(a) You must initiate the plan when you accept a child or enter into a written agreement with the birth parent for adoption placement services.

(b) You must complete the service plan within 40 days of initiation.

§749.3323. What must an adoption service plan include?

(a) The service plan must address:

(1) The needs of the birth parents (unless parental rights have been relinquished or involuntarily terminated), the fetus or child, and the adoptive family; and

(2) Any other issue that impacts the adoption.

(b) The adoptive family becomes part of the service plan when matched with a child, or with a birth parent and fetus. You do not have to develop separate service plans for adoptive families that do not have a completed home study.

(c) The plan must include an estimate of the time required to consummate the adoption. You must inform the birth parents and adoptive parents of the services you provide.

§749.3325. When placing a sibling group, must I develop a plan for each child?

If you place siblings in the same adoptive home, you do not have to develop a plan for each child. If you place siblings in separate adoptive homes, you have to develop separate plans for each home.

§749.3327. If a child had a foster care service plan prior to preparation for adoption, must I complete a new adoption service plan?

No. The adoption service plan may be a continuation of the foster care service plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601136

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. PREPARATION FOR ADOPTION

40 TAC §§749.3341, 749.3343, 749.3345, 749.3347, 749.3349, 749.3351, 749.3353

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3341. How often must I have contact with a child being considered for adoptive placement?

(a) You must have contact at least quarterly with the child being considered for adoption. The contact must be meaningful and must include:

(1) Continued preparation for adoption; and

(2) Updated information concerning the adoption.

(b) You must make a minimum of three face-to-face contacts with a child who is 18 months old or older to prepare the child for adoption.

(c) You must make a minimum of one face-to-face contact with an infant who is age zero to 18 months old.

(d) You must document each contact in the child's record.

§749.3343. What does preparing a child for adoption include?

(a) You must base your preparation on the child's needs and level of understanding.

(b) Preparation must include helping the child to:

- (1) Know and understand his history;
- (2) Understand the difference between biological, foster, and adoptive parents;
- (3) Express hopes and fears about adoption, including fears of disruption;
- (4) Separate from people he is close to, and grieve their loss;
- (5) Form new attachments; and
- (6) Work on his "life book" in order to address issues of separation and attachment.

(c) You must document preparation activities in the child's record.

§749.3345. Who must prepare a child for adoption?

(a) A person meeting the qualifications of child placement staff or child placement management staff must prepare a child for adoption.

(b) Before you can place the child in the adoptive home, child placement management staff must review and approve the preparation and related documentation.

§749.3347. What assessment information must I obtain on a child being placed for adoption?

(a) You must obtain professional assessments of the child's physical, mental, and emotional status and the child's developmental level.

(b) These assessments must be current within:

- (1) 30 days of placement if the child is age zero to 18 months;
- (2) Three months of placement if the child is age 18 months to five years; and
- (3) Six months of placement if the child is age five years old or older.

(c) You must provide any testing that an assessment recommends for the child.

(d) You must document the assessments and results in the adoption record.

§749.3349. What must the professional assessment of a child include?

(a) The extent of the professional assessment required depends on the age, history, and special needs of the child being considered.

(b) The professional assessment must always include a medical examination by a licensed physician.

(c) If the child's age is zero to 18 months old, the professional assessment must also include an evaluation by a professional credentialed in the area appropriate to the child's needs if:

- (1) There is history of abuse, neglect, or failure to thrive;
or
- (2) The child is physically or mentally disabled or developmentally delayed.

(d) If the child's age is over 18 months old, the assessment must include an evaluation by a licensed psychiatrist, psychologist, or other appropriately licensed or credentialed professional.

(e) If professional assessments have been completed since the child was placed in the home, you are not required to repeat them.

§749.3351. What information from the professional assessments must I share with the adoptive family?

You must share the following with the adoptive family:

(1) All information from the licensed physician and from the licensed psychiatrist, psychologist, or other licensed or credentialed professional about the potential impact on the child of existing conditions; and

(2) All information about any further testing or assessments that these professionals recommend. Any such tests must be scheduled by the date of placement.

§749.3353. What other referrals must I make regarding a child who has or may have a disability?

You must make a referral to the Social Security Administration to determine the child's eligibility for Social Security Income (SSI).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601137

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. PLACEMENT REQUIREMENTS

40 TAC §749.3371, §749.3373

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3371. What are the requirements for a child to visit the adoptive family prior to placement?

(a) Except in the case of children 12 months old and younger, a child must have at least one pre-placement visit with the adoptive family prior to placement. You must base the length, location, and number of visits on the age, development, and needs of the child.

(b) You must schedule these visits over a period of time that ensures that both the child and the adoptive family have adequate time to prepare for the placement. The period of time should be based on the age and developmental needs of the child.

(c) The planning for the pre-placement visits must include the child, if applicable, the foster parents, and the adoptive parents.

(d) You must document the plan for pre-placement visits. Your child placement management staff must approve the plan before visits are initiated.

§749.3373. What must my agreement with the adoptive parents include?

(a) Before placing the child into the home, you must have a written agreement with the adoptive parents.

(b) You must give a signed copy of this agreement to the adoptive parents and place a copy in the case record.

(c) The agreement must specify the following:

(1) The parties' agreement to complete the adoption at a specified time;

(2) The adoptive parents agreement for you to supervise them prior to the completion of the adoption;

(3) That the adoptive parents must notify you before moving their residence prior to the completion of the adoption;

(4) That you and the adoptive parents each have the discretion to end the placement prior to the adoption; and

(5) The fee and schedule of payment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601138

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. REQUIRED INFORMATION

40 TAC §§749.3391, 749.3393, 749.3395

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3391. What information must I compile for a child I am considering for adoptive placement?

As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:

Figure: 40 TAC §749.3391

§749.3393. What written authorization must I give adoptive parents at the time of placement?

(a) You must provide:

(1) Written authorization to care for the child;

(2) Written information about the legal status, including if the parental rights to the child have not been terminated; and

(3) Written consent for the medical care of the child at the time of the child's placement in the home, if available.

(b) You must file a copy of the signed authorizations and consent forms in the child's record and in the adoptive home record.

§749.3395. What information must I provide the adoptive parents prior to or at the time of adoptive placement?

(a) According to the Texas Family Code §162.006, you must inform the prospective adoptive parents of their right to examine the records and other information relating to the history of the child.

(b) The information provided to the prospective adoptive parents must be edited to protect the identity of the biological parents and any other person whose identity is confidential.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601139

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. POST-PLACEMENT SUPERVISION

40 TAC §§749.3421, 749.3423, 749.3425, 749.3427, 749.3429, 749.3431

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3421. What are my responsibilities for the child during the post-placement period?

During the post-placement period, you must:

(1) Ensure the adoptive placement continues to meet the child's needs;

(2) Maintain responsibility for the child until the court signs the adoption decree; and

(3) Make every effort to see that the adoption is consummated as stipulated within the written agreement, or renegotiate another time frame for when the adoption will be consummated.

§749.3423. What responsibility do I have to offer counseling services to the adoptive family?

To reduce the risk of adoptive placement breakdown, you must offer counseling services to the adoptive family. You must ensure that the adoptive family is aware that counseling is available. Counseling services may be provided by your agency or by an outside counseling resource.

§749.3425. What are the requirements for post-placement contacts with the adoptive family and child?

(a) You must have at least quarterly face-to-face contacts in the adoptive home, with both parents present, if applicable, as follows: Figure: 40 TAC §749.3425(a)

(b) Contacts not in the home may be in your office or another location that allows you enough privacy to counsel with the adoptive family and evaluate the placement.

(c) Contacts must be documented and reviewed by child placement management staff.

§749.3427. What must I do if the adoption is not completed within the time frame stipulated in the written agreement?

(a) The following individuals must assess why the adoption was not completed within the time frame stipulated in the written agreement:

- (1) Staff who supervise the adoption placement;
- (2) Any other professional staff involved with the family;

and

- (3) The adoptive family.

(b) You must establish a plan for finalizing the adoption and for supervising the placement. The plan must be based upon the assessment. The plan for supervising the placement must require at least quarterly face-to-face contacts in the adoptive home with both parents present.

(c) You must document the assessment and the plan.

(d) Child placement management staff must:

- (1) Review the documentation and plan; and
- (2) Determine whether the assessment and plan will meet the needs of the child for safety, care, and permanency.

(e) The adoptive placement must be re-evaluated if consummation of the adoption has not been completed within one year.

§749.3429. What must I do if there are changes in the adoptive family during the post-placement period?

You must document any changes in the adoptive family that may affect the child. This includes changes in health, financial condition, or family or household composition.

§749.3431. What must I do if I determine that the placement cannot be completed and/or is not in the best interest of the child and/or the adoptive family?

(a) You must remove the child from the adoptive family if the placement and adoption is not in the best interest of the child and/or the adoptive family.

(b) The decision to remove the child must be reviewed and approved by child placement management staff prior to the removal.

(c) If the child comes back into your care, you must document the following in the child's record:

(1) The circumstances necessitating the removal from the adoptive family; and

(2) An update of the child's service plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601140

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. POST-ADOPTION SERVICES

40 TAC §§749.3461, 749.3463, 749.3465

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3461. Must I continue offering counseling to an adoptive child after the adoption is consummated?

Yes, you must continue to offer counseling services after the adoption is consummated. You may provide these services through your agency or an outside counseling resource.

§749.3463. If information concerning birth parents comes to my attention, what are my responsibilities?

(a) You must make diligent efforts to inform adoptive parents and/or adult adoptee, in writing, about developing genetic conditions, terminal illnesses, or death of a birth parent that comes to your attention. You must document the information provided, the date and method of providing the information, and the names of the persons receiving the information.

(b) When an adoptive placement is made, you must tell older adopted children and adoptive parents that you will communicate the information in subsection (a) of this section to them provided that they keep you informed of their whereabouts. You must document when you gave this information to the child and to adoptive parents.

(c) When you receive information on the identified topic, you must, at a minimum:

(1) Write the adoptive parents and/or adult adoptee at the last known address;

(2) If the letter is returned to you as undeliverable, check the telephone directory or Internet search for the city where the adoptive parents and/or adult adoptee were last known to be living;

(3) If this action does not locate the adoptive parents and/or adult adoptee, check the record for contact information on family members or others who may have knowledge of the adoptive parents and/or adult adoptee's whereabouts and attempt to contact these persons and obtain forwarding information; and

(4) Document your attempts to locate the adoptive parents and/or adult adoptee.

§749.3465. What must I do when an adoptee requests his adoption record?

(a) According to Texas Family Code §162.006, you must provide to the adult adoptee a copy of the adoption report that has been edited to protect the identity of the biological parents and any other person whose identity is confidential.

(b) If the adoptee is younger than 18 years of age, the request for the information must come from or must include the written consent of the adoptee's adoptive parents or managing conservator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601141

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER R. ADOPTION SERVICES: BIRTH PARENTS

DIVISION 1. BIRTH PARENT PREPARATION

40 TAC §749.3501, §749.3503

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3501. What information must I provide to birth parents who contact me for services?

(a) Prior to establishing a formal relationship with birth parents, you must provide the following information to them in writing:

(1) Alternatives and options to adoption that your policies do not oppose;

(2) The services you provide, including counseling and post-adoption services;

(3) Adoption registries;

(4) Legal rights and responsibilities of both birth parents in regard to:

(A) Relinquishment of parental rights;

(B) Waivers of Interest;

(C) Affidavit of status;

(D) Termination of parental rights;

(E) Designating the father of a child as "unknown" based on legal requirements; and

(F) Paternity registry requirements; and

(5) Any assistance available through the agency to meet housing, medical, and prenatal care and other needs;

(b) You must provide and discuss this information to birth parents in a language that they understand; and

(c) You must document the:

(1) Date the information was shared; and

(2) Agency staff that shared the information.

§749.3503. What are the requirements for contacting birth parents that become my clients?

(a) Child placement staff must have at least:

(1) Two face-to-face contacts with birth parents prior to the relinquishment of parental rights over a period of two or more days. At least one interview must be held after the birth of the child;

(2) Except in cases of relinquishment or involuntary termination of parental rights, quarterly contact with birth parents prior to placement of the child.

(b) Contacts must assist birth parents to:

(1) Understand their feelings regarding relinquishing the child for adoption;

(2) Understand the long-range implications of relinquishing the child for adoption;

(3) Freely make a choice regarding relinquishing the child to the agency for adoption;

(4) Insure that birth parents are not pressured to make a decision to place their child for adoption;

(5) Obtain information from birth parents about their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with adoptive family; and

(6) Obtain the required Health, Social, Educational, and Genetic History Report (HSEGH).

(c) The following topics must be discussed with the birth parents:

(1) Preparation for childbirth, when applicable;

(2) Relinquishment or waiver of parental rights;

(3) Termination of parental rights; and

(4) Counseling in regard to separation, loss, and grief issues.

(d) Staff providing the service must document all contacts with birth parents.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601142

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

DIVISION 2. TERMINATION OF PARENTAL RIGHTS

40 TAC §749.3521, §749.3523

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3521. What requirements must I follow regarding termination of parental rights?

You must comply with all state and federal laws regarding termination of parental rights, including Chapter 161 of the Texas Family Code (relating to Termination of the Parent-child Relationship).

§749.3523. What specific information must I obtain from birth parents that voluntarily relinquish their parental rights?

A parent who signs an affidavit of voluntary relinquishment of parental rights regarding a biological child must also prepare a medical history report form that we issue. If the child is:

(1) In the managing conservatorship of Child Protective Services, DFPS must maintain the form and make it available to persons with whom the child is placed; and

(2) Placed for private adoption through a licensed child-placing agency, that agency must maintain the form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601143

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

DIVISION 3. POST ADOPTION SERVICES

40 TAC §749.3571, §749.3573

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3571. Must I offer counseling services to birth parents after the adoption of their child is consummated?

(a) Yes. You must offer counseling services to birth parents after the consummation of the adoption.

(b) You must ensure that birth parents are notified in writing that counseling services are available through the agency on an ongoing basis.

(c) You may provide counseling services directly or through referrals to counseling resources outside your agency.

§749.3573. What are the requirements to provide information about the child to birth parents after the adoption is consummated?

(a) You must make diligent efforts to inform birth parents, in writing, about developing genetic conditions, terminal illness, or death of the biological child that comes to your attention.

(b) At the time the adoption placement is made, you must tell birth parents that you will communicate the information in subsection (a) of this section to them provided that they keep you informed of their whereabouts.

(c) When you receive information on the identified topics, you must, at a minimum:

(1) Write the birth parents at the last known address;

(2) If the letter is returned to the agency as undeliverable, check the telephone directory or Internet search for the city where the family was last known to be living;

(3) If this action does not locate the birth parents, check the record for contact information of family members or others who may have knowledge of the family's whereabouts and attempt to contact these persons and obtain forwarding information; and

(4) Document your attempts to locate the birth parents, the information provided, the date and method of providing the information, and the names of the persons receiving the information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601144

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER S. ADOPTION SERVICES: ADOPTIVE PARENTS

DIVISION 1. ADOPTIVE APPLICANT PREPARATION

40 TAC §749.3601

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.3601. What information must I provide to persons inquiring about agency adoption services?

Prior to establishing any formal relationship with prospective adoptive applicants, you must provide written information regarding:

- (1) The services you provide, including counseling and post-adoptive services;
- (2) Fee policies and payment procedures;
- (3) Agency requirements and procedures;
- (4) Legal requirements for adoption, including their right to have independent legal counsel for legal consummation. You may require that the legal counsel selected by the applicants be experienced in adoptions. If the attorney selected by the applicants is not experienced in adoptions, you may require the adoptive applicants to have an additional, experienced attorney handle the adoption requirements while allowing oversight by the applicants' choice of attorney; and
- (5) Adoption registries.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601145
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



DIVISION 2. PRE-ADOPTIVE HOME SCREENING

40 TAC §§749.3621, 749.3623, 749.3625, 749.3627, 749.3629, 749.3631, 749.3633

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3621. What is a pre-adoptive home screening?

A pre-adoptive home screening contains documentation of the following:

- (1) Interviews with adoption applicants, their families, and collateral contacts as necessary;
- (2) Information obtained through review of documents, reports, and inspections;
- (3) Assessment of the information obtained to determine whether applicants meet the requirements for approval as adoptive families;
- (4) Evaluation of the information obtained in order to make recommendations about the family's capacity for adoption, including the age, number, sex, and special needs of the children the family has the capacity to parent;
- (5) Assessment of basic care and safety issues, including safety of the environment of the adoptive home; and
- (6) Review and approval by child placement management staff.

§749.3623. What information must I obtain for the adoptive home screening?

You must obtain, document, and assess the following information about a prospective adoptive home:

Figure: 40 TAC §749.3623

§749.3625. Whom must I interview when conducting an adoptive home screening?

Interviews for an adoptive home screening must include:

- (1) At least one individual interview with each prospective adoptive parent;
- (2) At least one individual interview with each child three years or older living in the home either full or part time;
- (3) At least one individual interview with any other person living full or part time with the family;
- (4) At least one joint interview with the adoptive applicants;
- (5) At least one family group interview with family members living in the home; and
- (6) At least one interview, by telephone, in person or by letter, with any minor child 12 years old or older or adult child of the

adoptive applicants not living in the home. If you cannot reach an adult child to interview, you must document your diligent efforts.

§749.3627. What must I document regarding interviews that I conduct for an adoptive home screening?

You must document all interviews and attempts to complete interviews. The documentation must be a part of the adoptive home record and include:

- (1) The dates and methods used to contact the required persons;
- (2) The dates of the interviews;
- (3) Who was present at the interviews and their relationship to the adoptive applicants; and
- (4) A summary of the interviews.

§749.3629. What are the requirements for visiting the home during an adoptive home screening?

(a) If the home is not providing foster care to the child prior to the consummation of the adoption, you must visit the home when all members of the household are present.

(b) You must document in the record the date, persons present, their relationship to the prospective adoptive family, and observations made during the visit.

§749.3631. What are the requirements if adoptive applicants previously adopted a child from another child-placing agency or were previously foster parents for another agency?

(a) You must request information related to the parents' experience and performance as foster and/or adoptive parents from the previous agency and any background information regarding the foster home as described in §749.2447(22) of this title (relating to What information must I obtain for the foster home screening?).

(b) If provided you must evaluate the information as part of your screening and placement decisions regarding the home. You must use the information to evaluate the family's ability to work with specific kinds of behaviors and backgrounds.

§749.3633. What must I do if I do not place a child with the adoptive applicants within six months after I complete the pre-adoptive home screening?

(a) If you do not place a child with the adoptive applicants within six months after you complete the adoptive screening, you must update the screening within the 30-day period before a child is placed in the home.

(b) For adoptive homes that are not providing foster care, the written update must include:

- (1) A review and any required updating of each category of information required for an adoptive home screening; and
- (2) Documentation of at least one visit to the adoptive home when all household members are present within the 30-day period before a child is placed in the home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601146

Gerry Williams
General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. BASIC CARE AND SAFETY REQUIREMENTS

40 TAC §749.3661, §749.3663

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3661. What information must adoptive applicants submit on their home and grounds as a part of their application?

(a) Adoptive applicants must submit a sketch of the floor plan of the home showing dimensions and purposes of all rooms in the home.

(b) Adoptive applicants must submit a sketch or photo of the outside areas showing areas of the grounds to be used by the child.

(c) If the home is providing foster care, you may use the foster care screening information.

(d) You must review the sketches and/or photos to determine:

(1) Whether there is sufficient space to accommodate the members of the household and the adoptive child(ren); and

(2) Any potential safety or health issues.

§749.3663. What are the basic safety requirements for the home and grounds?

(a) The home must be clean, safe, and free of obvious fire and other hazards. The home must be equipped with smoke detectors.

(b) Pets must be vaccinated and treated as recommended by a licensed veterinarian.

(c) If the adoptive home has a swimming pool, wading pool, hot tub, or other bodies of water on the premises, you must discuss safety issues and plans to ensure the safety of the child with the adoptive applicants.

(d) You must discuss and assess basic care and safety issues depending on the age and specific needs of the child or children being considered for placement in the home. When you select a child for placement in the home, you must discuss issues specific to the child including supervision, special health or behavior risks, and general child care needs according to the experience and training needs of the adoptive parents.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601147

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. PRE-PLACEMENT REQUIREMENTS

40 TAC §749.3691, §749.3693

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3691. What contacts must I maintain with adoptive applicants prior to the placement of a child?

(a) After you accept a family as a potential adoptive placement, you must maintain at least quarterly contact with them.

(b) You must discuss any changes in the information that you obtain during the adoption screening.

(c) In addition to the quarterly contacts, you must provide education and training in regard to the following as deemed appropriate by the child placing staff:

- (1) Bonding with adoptive children;
- (2) Parenting issues and concerns; and
- (3) Children with special needs, if appropriate.

(d) You must document each contact and training that was provided in the family's record, indicating the date, type of contact, and content.

§749.3693. May I contract with another agency for the quarterly contacts?

You may contract with another agency for the quarterly contacts as long as:

- (1) The agency reports the required information to you; and
- (2) You maintain the report in the adoptive applicants' record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601148

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. PRE-ADOPTION CONSUMMATION ACTIVITIES

40 TAC §§749.3721, 749.3723, 749.3725, 749.3727, 749.3729

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§749.3721. What are my agency's responsibilities during the pre-adoption supervisory period?

Your agency must:

- (1) Ensure the child's needs are met in the adoptive placement;
- (2) Maintain responsibility for the child until the court has entered the adoption decree; and
- (3) Offer counseling services to the adoptive family. These services may be provided through referrals outside the agency.

§749.3723. What must be included in pre-adoptive placement supervision for homes that are not providing foster care services?

(a) You must have at least quarterly face-to-face contacts in the adoptive home with both parents present.

(b) For children under the age of two, with the exception of children with special needs, your agency must have a minimum of five supervisory face-to-face contacts with the adoptive parents and child within the first six months of placement.

(1) Three of the contacts must be with the entire family, including both adoptive parents, adoptive child, and any other children or household members living full time in the home; and

(2) Two of the contacts must be in the adoptive home.

(c) For children with special needs and children ages two years or older, the agency must have monthly face-to-face contacts with the adoptive family during the first six months.

(1) Five of the contacts must be with the entire family; and

(2) Four of the contacts must be in the adoptive home.

(d) Contacts must be documented and reviewed by child placement management staff.

§749.3725. If the adoption has not been completed within the stipulated time frame in the written agreement, what actions must my agency take?

Your agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

(1) You must make an assessment of why the adoption will not be completed at the end of a six-month supervisory period. The assessment must include:

(A) Input from staff who have supervised the adoption placement, professionals who have provided counseling for the family, any other professional staff involved with the family, and the adoptive family; and

(B) A plan for finalization of the adoption and for supervision of the placement that is based upon the assessment.

(2) The assessment and plan must be documented. Child placement management staff must review the documentation and plan and must determine whether the assessment and plan will meet the needs of the child for safety, care, and permanency.

(3) The adoptive placement must be re-evaluated if it has not been completed within one year.

§749.3727. What actions must my agency take if there are changes to the adoptive family during the post-placement period?

Your agency must document any changes in the adoptive family that may affect the child and assess the effect of the changes on the child. This includes changes in health, financial condition, or family or household composition.

§749.3729. What must my agency do if the placement cannot be completed and/or is not in the best interests of the child and/or the adoptive family?

Your agency must remove the child from the adoptive family if the placement and adoption is not in the best interests of the child and/or the adoptive family. The decision to remove the child must be reviewed and approved by child placement management staff prior to the removal. You must document the circumstances necessitating the removal and the child's needs in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601149

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 6. COUNSELING SERVICES

40 TAC §749.3741

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.3741. Is my agency required to offer counseling services to the adoptive family?

Yes, you must offer counseling services post-placement and post-adoption. The services may be provided directly or through referrals outside of your agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601150

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 7. SUBSEQUENT ADOPTIONS

40 TAC §749.3761

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§749.3761. What are the requirements if adoptive parents apply to adopt another child?

(a) Before you may place another child into the home, you must update the pre-adoptive screening.

(b) The update must include at least one:

(1) Individual interview with each applicant;

(2) Individual interview with each child three years or older living in the home either full or part time;

(3) Individual interview with any other person living full or part time with the family; and

(4) Visit to the home while all family members are present.

(c) You must complete all other requirements for an adoptive placement.

(d) If a subsequent adoption occurs within one year from a previous adoption, in which all of the required home visits and interviews were conducted, an individual interview with both adoptive parents and a home visit with all family members present will meet the interviewing and home visit requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601151

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER T. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE ASSESSMENT SERVICES

DIVISION 1. REGULATION

40 TAC §749.3801

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042 and §42.0425.

§749.3801. Does Licensing regulate all assessment services?

(a) No. This subchapter only regulates child-placing agencies that also provide assessment services.

(b) Services provided by other individuals, agencies, and organizations are not subject to regulation under this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601152

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. ADMISSION

40 TAC §749.3831

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042 and §42.0425.

§749.3831. What are the requirements for approving a child's admission into my assessment program?

(a) The person responsible for the assessment services program must review and approve in writing the determination that your program will be able to provide or obtain all assessment services the child appears to need at intake.

(b) The review, determination, and approval must be:

(1) In writing, signed, and dated from the person responsible for the assessment services program; and

(2) Completed prior to the admission of the child into your assessment services program.

(c) The determination on the appropriateness of the program to meet the child's assessment needs must be filed in the child's assessment services record if the child is admitted into your assessment services program.

(d) You must document in the child's record whether you are:

(1) Only providing assessment services to the child; or

(2) Also providing other services, such as transitional living services.

(e) You must document the date of the child's admission into your assessment program in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601153

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. ASSESSMENT PLAN

40 TAC §§749.3861, 749.3863, 749.3865, 749.3867, 749.3869, 749.3871

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§749.3861. When must I complete the child's individual assessment plan?

(a) You must complete the child's individual assessment plan within 10 days from the date of the child's admission into the program.

(b) You must document the plan in the child's record.

§749.3863. When does admission into the assessment services program begin?

Admission into the assessment services program begins when:

(1) The parent makes the decision to place the child into the assessment services program; and

(2) You decide to accept the child for these services.

§749.3865. What must an individual assessment plan include?

An individual assessment plan must include:

(1) Time frames for providing all assessment services;

(2) Recommendations for the child's care during the assessment process;

(3) Any treatment to be provided during the assessment period; and

(4) Current data from the caregiver's evaluation of the child's behavior and level of functioning.

§749.3867. May the common application serve as the assessment plan?

No. The common application may not serve as the plan for how your assessment services program is going to meet the child's needs.

§749.3869. How must my assessment services program collect information from a child's caregivers?

(a) Your assessment services program must systematically collect information from caregivers throughout the child's participation in the assessment services program. This information includes the caregivers' observations and opinions of the child.

(b) You must document this information in the child's assessment services record. Your documentation must include your consideration of the caregivers' observations and opinions.

§749.3871. When is the assessment plan complete?

(a) The assessment plan is complete when it contains the necessary information and the signed approval of the person responsible for the assessment services program or a designated employee who meets the qualifications of a person responsible for the assessment program.

(b) The parent must review and be provided a copy of the assessment plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601154

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

DIVISION 4. ASSESSMENT REPORT

40 TAC §§749.3891, 749.3893, 749.3895, 749.3897

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and §42.0425.

§749.3891. What is an assessment report?

(a) The assessment report that is the result of the assessment services is a narrative report that pulls together data from:

(1) Professional evaluation reports on the child; and

(2) The program's assessment on how the child is managing in the program.

(b) The report includes:

(1) Recommendations made in other professional evaluations; and

(2) Recommendations based on the program's experiences with and assessment of the child.

(c) The common application is not and must not serve as the assessment report.

§749.3893. When must I complete the assessment report?

(a) The admission assessment must be conducted rapidly, consistent with good practice, in order to allow for a permanent placement as soon as possible.

(b) You must complete the assessment report:

(1) Within 30 days after you admit the child, if the child is younger than five years old; or

(2) Within 45 days after you admit the child, if the child is five years old or older.

(c) With the approval of the child's parent, you may extend the time frame for completing the report for an additional 15 days. You must document the need for the extension of time in the child's record.

(d) You must complete the assessment report before a planned discharge of the child from the assessment services program. However, additional assessment services may be conducted subsequent to placement if a quick placement is in the best interest of the child.

(e) You must provide a copy of the assessment report to the child's parent as soon as the report is complete.

§749.3895. What must be included in the written assessment report?

In addition to the requirements set forth in §749.1133 of this title (relating to What information must an admission assessment include?), a written assessment report must include:

(1) Copies and results of the determination of the child's basic health and social and developmental assessment, including:

(A) The child's basic health status, as determined under the supervision of a licensed physician;

(B) The child's basic social and developmental needs, as determined under the supervision of the person responsible for the assessment services program or a designated employee who meets the qualifications for a person responsible for the assessment program;

(C) Recommendations for any further assessment services and testing; and

(D) An assessment of the child's immediate and extended family in terms of an ongoing relationship with the child;

(2) Copies and results of all evaluations and testing;

(3) A summary of the primary caregivers' evaluations of the child's behavior and level of functioning;

(4) An assessment of the results and summary in terms of appropriate short- and long-term planning for the child;

(5) Recommendations for placement; and

(6) A recommended behavior management plan based on the assessment results and the primary caregivers' evaluations of the child's behavior and level of functioning.

§749.3897. Who must review and approve an assessment report?

(a) The following people must review the assessment report:

(1) The person responsible for the assessment program or a designated employee who meets the qualifications of a person responsible for the assessment program;

(2) The child's primary caregiver; and

(3) The child's parent.

(b) The person responsible for the assessment program, or the designated qualified employee, must approve and sign the report.

(c) You must file the original, approved and signed assessment report, including any addendums to the report, in the child's assessment services record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601155

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



CHAPTER 750. INDEPENDENT FOSTER HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new Chapter 750, Independent Foster Homes, consisting of Subchapter A, Purpose and Scope, §§750.1, 750.3, 750.5; Subchapter B, Definitions and Services, Division 1, Definitions, §750.41, §750.43; Division 2, Services, §750.61; Subchapter C, Organization and Administration, Division 1,

Permit Holder Responsibilities, §§750.101, 750.103, 750.105, 750.107; Division 2, Governing Body, §750.121, §750.123; Division 3, Fiscal Requirements, §750.131, §750.133; Division 4, Foster Home Policies, §§750.151, 750.153, 750.155, 750.157, 750.159, 750.161, 750.163, 750.165, 750.167, 750.169, 750.171; Division 5, Clients and Appeals, §§750.181, 750.183, 750.185; Subchapter D, Reports and Record Keeping, Division 1, Serious Incident Reports; General Requirements for All Records; and Personnel Records, §750.201; Division 2, Client Records, §§750.231, 750.233, 750.235, 750.237, 750.239, 750.241, 750.243, 750.245; Subchapter E, Foster Home Staff and Caregivers, Division 1, General Requirements, §750.301; Division 2, Executive Director, §750.331, §750.333; Division 3, Treatment Director, §§750.351, 750.353, 750.355; Division 4, Treatment Services Provided by Nursing Professionals; Contract Staff, Volunteers, and Student Interns, §750.371, §750.373; Subchapter F, Training and Professional Development, §750.401, §750.403; Subchapter G, Children's Rights, §§750.451, 750.453, 750.455; Subchapter H, Admission, §750.501; Subchapter I, Service Planning, and Discharge, §750.601; Subchapter J, Medical and Dental, §750.701; Subchapter K, Daily Care, Problem Management, §750.801; Subchapter L, Emergency Behavior Intervention, §750.901; Subchapter M, Capacity and Child/Caregiver Ratio; Supervision; Respite Child-Care Services; and Foster Family Relationships, §§750.1001, 750.1003, 750.1005, 750.1007, 750.1009; Subchapter N, Health and Safety Requirements, Environment, Space and Equipment, §750.1101; and Subchapter O, Assessment Services, §750.1201.

DFPS is required by Chapter 42 of the Human Resources Code to periodically review all minimum standard rules. In addition, part of the Child Care Licensing Division's (Licensing) business plan is to review, analyze, and update Licensing rules to strengthen the protection of children in out-of-home care and improve an operator's understanding of the rules. In this issue of the *Texas Register*, DFPS is proposing to repeal Chapter 720, 24-Hour Care Licensing, and to replace it with three new chapters, one of which is Chapter 750, Independent Foster Homes.

The existing minimum standards for child-placing agencies in Chapter 720 are outdated. The standards have not been revised since 1985. The current standards are divided according to the type of home where care is provided, e.g. therapeutic foster home, habilitative foster home, etc. The proposed rules will consolidate the minimum standards for all these homes into a cohesive set of rules that are designed to focus on the needs of the children in care. Many of the proposed changes are due to this consolidation.

In order to update the minimum standards, information has been obtained from providers and provider associations, Child Protective Services, and Licensing staff. Updates have also been made based on the review of available research and literature relating to the child development field, best practices in child placement, and health and safety practices recommended by experts such as the Consumer Product Safety Commission, American Academy of Pediatrics, and the Texas Department of State Health Services.

The proposed rules will also facilitate an understanding of the law and Licensing requirements and are written using "plain language" techniques with a question and answer format. Rules that are easy to read and understand will result in higher rates of compliance.

A summary of some of the significant changes found in Chapter 750 follows:

Subchapter A, Purpose and Scope - This subchapter describes the applicability of the chapter, which applies to independent foster family homes and independent group homes. Because many of the rules in Chapter 750 cross-reference the rules in Chapter 749, Child-Placing Agencies, this subchapter also explains how to translate some of the terminology used in Chapter 749 into Chapter 750.

Subchapter B, Definitions and Services - This subchapter defines foster family home and foster group home as the primary residence of the foster parents, which effectively prohibits staffed foster homes. However, there is a grandfather clause for current homes. This subchapter also describes the services that independent homes may offer. Generally, homes may be licensed to provide any type of service regulated by DFPS and must have operational policies and procedures to ensure children are admitted and served appropriately. This subchapter defines the types of services DFPS regulates as child-care services, treatment services, and programmatic services. Treatment services are designed to treat and or support children with emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs. Programmatic services include transitional living services and assessment services. Homes must request and receive approval on the license to provide treatment and programmatic services.

Subchapter C, Organization and Administration - This subchapter includes the responsibilities of the permit holder, both before and during the operation of the independent home. The subchapter describes the responsibilities of the governing body and contains the fiscal requirements. This subchapter also contains requirements for certain policies that a home must have regarding admissions, child-care, emergency behavior intervention, discipline, foster care, treatment services, transitional living, babysitters and respite care, and volunteers. This subchapter also explains who a home's clients are and what rights they have.

Subchapter D, Reports and Record Keeping - This subchapter includes requirements for increased serious incident reporting, including specific time frames for notifying Licensing, a child's parent, and/or law enforcement; content and retention of home, child, and personnel records, including open, archived, and closed records; and defines timeliness of documentation in a child, personnel, or foster parent record is within 30 days of the event or occurrence.

Subchapter E, Foster Home Staff and Caregivers - This subchapter requires a written professional staffing plan; a licensed registered nurse on staff if the home serves children with primary medical needs; a treatment director for a home that provides treatment services, including minimum qualifications for this position according to the type of service being provided; specific responsibilities of a caregiver when supervising children; and restrictions and requirements for volunteers.

Subchapter F, Training and Professional Development - This subchapter includes content and hourly requirements for employee and caregiver/foster parent orientation, pre-service training, annual training, and first-aid and CPR and certification. The pre-service and annual training requirements include training on emergency behavior intervention, psychotropic medications, and for those caring for infants and toddlers, information on recognizing and preventing shaken baby syndrome,

preventing sudden infant death syndrome, and early childhood brain development.

Subchapter G, Children's Rights - Specific child rights are listed, including the right to have services provided in a language, or any other means, that is understandable to the child; the right to be free from discrimination; the right to confidential care and treatment; and the right not to receive unnecessary or excessive medication. This subchapter also includes specific requirements regarding the search of a child or a child's property, and for informing a child of his rights.

Subchapter H, Admission - This subchapter allows a child to remain in care until age 22, or indefinitely based on the child's circumstances; lists the admission assessment requirements; lists the medical and dental requirements at admission; allows certain emergency admissions, including emergency placements to authorized agencies from law enforcement or juvenile probation officers; and discusses the requirements for pre-placement visits and subsequent placements in foster homes.

Subchapter I, Service Planning and Discharge - This subchapter adds requirements for a preliminary service plan within 72 hours of admission for each child; adds specific requirements for the content of children's service plans based on age and special needs; requires each initial service plan to be completed within 40 days of admission; requires that a child be informed of his/her planned discharge at least four days in advance unless there is a documented clinical justification for not providing advance notice; and increases requirements for discharge planning and documentation.

Subchapter J, Medical and Dental - This subchapter explains the medical and dental requirements for a child in care; requirements for communicable diseases; requirements for TB testing; immunization requirements; requires children to have a vision and hearing screening; describes the parameters for administering, storing, and destroying medication; increases documentation requirements regarding children's prescription medications; increases the requirements on providing information to parents regarding the use of psychotropic medications; and explains when protective and supportive devices may be used.

Subchapter K, Daily Care, Problem Management - This subchapter includes new requirements regarding infants, including feeding, furnishings/equipment, safety, and supervision; children in care who are pregnant or parenting; the agency's involvement with a child's education, including attending conferences specific to the child and advocating for the child's needs; and children's recreational needs. Other requirements address prohibited types of punishment, such as pinching and biting, putting anything in or on a child's mouth, placing a child in a dark space, and requiring a child to remain silent or inactive for inappropriately long periods of time.

Subchapter L, Emergency Behavior Intervention - This subchapter requires a review of each use of emergency behavior intervention within 72 hours of the incident; prohibits prone personal restraints, except as transitional holds that last no longer than one minute; prohibits any personal restraints that twist or place the child's limb(s) behind the child's back; and increases requirements for regularly scheduled evaluations of emergency behavior interventions, both for individual children and for the home as a whole.

Subchapter M, Capacity and Child/Caregiver Ratio; Supervision; Respite Child-Care Services; and Foster Family Relationships - Foster parents and caregivers must be 21 years old or older if

children placed in the home are 13 years old or older. Married foster parents must have been married at least two years prior to verification as foster parents. All children in the foster home must be counted in the home's capacity, including biological children and children placed for respite care. Child/caregiver ratios are decreased, particularly for young children and children receiving treatment services. Other requirements provide increased specificity regarding supervising children in care, use of babysitters, and respite care, including who may provide respite care, time frame restrictions, and required documentation. This subchapter contains specific requirements for life changes that occur at a home, of which Licensing must be notified.

Subchapter N, Health and Safety Requirements, Environment, Space and Equipment - Foster homes must have fire and health inspections; adults at a foster home can only use tobacco products outside, and use of tobacco products in a vehicle while transporting children in care is prohibited; there are requirements and limitations for weapons in foster homes; a maximum of four children may share a bedroom, excluding children with primary medical needs; foster parents must offer children in care the same food choices that the rest of the family is eating; and there are requirements for swimming pools and going swimming. Foster parents are allowed to teach a child to drive.

Subchapter O, Assessment Services - This subchapter clarifies that DFPS only regulates homes that also provide assessment services. Requirements include a determination that must be made regarding admission, and an assessment plan and report must be completed within 30 or 45 days of admission, depending on the age of the child.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the risk of harm to children will be reduced and quality of care will be improved due to updating standards on current knowledge and practices. In addition, the standards will be easier to understand, which should encourage voluntary compliance and reduce noncompliance caused by misinterpretation of the rules.

For each of the first five years that the proposed rules are in effect, Ms. Brown has determined there may be an impact to large, small, and micro-businesses that must comply with these rules, namely independent foster homes. This impact may result in increased cost of services for independent foster homes that do not already meet the proposed minimum standards and these increased costs could be passed on to customers, clients, or funding sources.

To assist with evaluating the potential costs, the fiscal impact is stated in terms of cost per \$100 of revenues. It is important to note that, based on survey information, many agencies already meet many of the standards being proposed. Other standards will require only a one-time investment, and will not necessarily result in higher recurring costs. Some agencies will be grandfathered in for some standards, or will be given additional time to comply. In addition, foster homes have some flexibility in the way they structure their operation so as to minimize the impact on their costs of operation.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using a combination of survey data, cost research conducted by staff, and assumptions regarding child-care practices. The survey process, as well as certain key assumptions and methodologies, are described in detail below, as these underlie the individual impact calculations for each rule, or set of rules, that are projected to have a fiscal impact on at least some agencies.

Minimum Standards Rules Revision Survey of Information (the Survey) and Impact Methodology: The purpose of the fiscal impact survey was to assess how many providers would be potentially impacted by certain rules and the estimated costs if the rules were adopted. The results helped to refine the proposed changes to provide the optimum balance of protection for children without significantly impacting the cost and availability of services.

The survey was conducted electronically in August and September 2005 through an Internet website. Licensed providers were notified by postcard, mailed prior to the beginning of the survey, of the survey dates and Internet website address. Other efforts to make all providers aware of the survey included communications through stakeholder groups and notifications published on agency websites.

At the same time the fiscal impact survey was released in August, a draft of the rules was placed on the DFPS agency website. The purpose of putting the draft on the website was to help those completing the fiscal impact survey understand the proposed changes, so they could furnish appropriate well-informed cost data.

Licensing staff, working with other DFPS staff from the Operations Division and the Financial Services Office, developed the survey. The questions were a mix of multiple choice and open-ended responses. Open-ended questions were used when requesting demographics or information, such as cost estimates and/or specific actions that would be taken as a result of a particular proposed rule. The survey included assumptions about which rules would be absorbed in the regular costs incurred by the operations and which rules would have a potential fiscal impact. Survey questions were not developed for every rule because some rules did not have an identifiable fiscal impact, or the impact was deemed insignificant.

The survey was available on a DFPS website from August 22, 2005, through September 20, 2005. The response rate was:

Child-Placing Agencies and Homes - 37 surveys completed and of this total, 4 were Independent Foster Homes and 2 were Independent Foster Group Homes. The total response rate was 17.7%.

Providers were limited to one survey response each. The agency name was requested to validate that they were a licensed provider eligible to complete the survey and that no duplicate surveys were received.

For each rule addressed by the survey, an estimate was made of the percent of agencies potentially impacted. The percent potentially impacted was calculated by analyzing the responses to the individual survey questions for various indicators.

Annual revenue was calculated from expenditure data at DFPS as adjusted by certain factors. A completion factor was applied to actual Fiscal Year 2005 DFPS payments to each entity as of August 31, 2005, to annualize the total to a projected 12-month period. This amount was then increased proportion-

ately based on survey reported information of the percentage of DFPS enrollment at each entity in order to project revenues from all other sources related to licensed activities. In instances where there was no DFPS payments or child placements, the entity was asked to furnish their annual budget related to licensed activities. Cost per \$100 of revenue was then determined as follows:

Estimated annual revenue / 100 = total number of \$100 revenue in a year

As cost estimates were developed for each rule, the estimate was stated by \$100 of revenue for each entity potentially impacted. These amounts were then averaged to obtain the overall estimated fiscal impact. If a rule would have only a one-time cost, it was assumed that the cost would be absorbed over the course of a year. If a rule could be implemented over multiple years, it was assumed that the cost would be absorbed over the entire length of the implementation period. Finally, if a cost is recurring, it was calculated for one year at a time.

Current providers will be grandfathered for some rules, as long as their license remains valid. There is no estimated fiscal impact to persons or businesses for those rules because no current provider is required to comply and new providers will be subject to the minimum standards that are in effect at the time the business begins operation.

The following is a summary of the rules analyzed for fiscal impact, including the rule number, a description of the rule that results in the fiscal impact, assumptions and other information specific to the cost calculations, cost type (one-time, recurring, etc.), the estimated cost per \$100 of revenue, and the percentage of foster homes potentially impacted.

Many of the rules in Chapter 750 cross-reference entire sub-chapters or divisions of Chapter 749. Each section of the following fiscal impact summary with such a cross-reference will contain both the number of the rule in Chapter 750 with the cross-reference to Chapter 749, and the number of the specific rule in Chapter 749 that contains the text that is the subject of the fiscal impact. The latter will be in parentheses following the Chapter 750 rule.

Fiscal Impact for Proposed §750.159: This section requires policies on emergency behavior intervention to include a requirement to obtain, at admission, each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process. This rule was included since asking each child what helps him calm down when he is upset is a logical and necessary part of planning for the care of the child. Required policy also includes that this information be revisited after each emergency behavior intervention. Cost of compliance includes both first year costs to develop the policies and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost impact is in the first year, which is estimated at an average of \$0.15 per \$100 of revenue. The recurring cost of subsequent years is estimated at an average of \$0.04 per \$100 of revenue. An estimated 47% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.165: This section requires policies related to foster homes that provide treatment services, including an on-going assessment of the caregiver's ability to meet the needs of the child and plans for emergency back-up. Cost of compliance includes both first year costs to develop the policies and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost

impact is in the first year, which is estimated at an average of \$0.43 per \$100 of revenue. The recurring cost of subsequent years is estimated at an average of \$0.19 per \$100 of revenue. An estimated 28% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.169: This section requires a home to have specific policies related to babysitters and respite care in foster homes. There are no current rules regarding respite care. As more homes are providing respite foster care, it is necessary to strengthen the regulation of this type of care to ensure the safety of the child. Homes not already meeting the rule must develop and implement specific policies related to babysitters and respite care in foster homes to include the amount and type of training for caregivers, and number of children and length of time they can be cared for. Cost of compliance includes both first year costs to develop the policies, and recurring costs of subsequent years as the policies are implemented. Based on survey data, the more significant cost impact is in the first year, which is estimated at an average of \$0.10 per \$100 of revenue. The recurring cost of subsequent years is estimated at an average of \$0.05 per \$100 of revenue. An estimated 75% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.831): This rule stipulates there must be an orientation for caregivers and employees and specifies topics that must be covered in orientation training. Current rules require an orientation for employees on the home's policies and activities; however, this rule is more specific in what that orientation must contain. Agencies and homes were asked to compare the proposed rule to their current orientation training, and estimate the cost of revising their curriculum and providing training that includes all the required elements. Approximately 97% of the total cost estimate is first-year costs of developing and implementing training on new topics, and the rest is recurring costs of continuing the orientation training in subsequent years. The estimated average costs are \$0.93 per \$100 of revenue in the first year, and \$0.03 per \$100 of revenue in subsequent years. An estimated 26% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.863 and §749.869(d)): This section requires that a new caregiver with no prior training or experience in the use of emergency behavior intervention must complete a minimum of eight hours of pre-service training on this subject. Caregivers of children receiving treatment services must complete 16 hours. The current rule has no clock hour requirement for this pre-service training. The training must be competency based and require participants to demonstrate skill competency at the end of the training. A qualified instructor certified in a recognized method of emergency behavior intervention must present the training. DFPS has investigated a number of restraint-related injuries or deaths. This rule will ensure at least a minimal level of training has been given to caregivers. The cost will be recurring. Homes and agencies not meeting the requirement provided cost estimates of doing so. Costs are affected by many variables, such as number of caregivers requiring training, amount of training currently provided, and qualifications of current instructors. As would be expected, these variables led to a wide range of cost estimates from \$0 to approximately \$122,000 per agency. Based on the survey data, the estimated average costs are \$0.23 per \$100 of revenue for agencies and homes providing basic child-care services and \$0.45 per \$100 revenue for agencies and homes providing treatment services.

An estimated 77% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.885 and §749.869(c)): These rules require pre-service training to caregivers who administer psychotropic medication. The training must include identification of psychotropic medications, basic pharmacology, techniques and methods of administering the medications, and related agency policies and procedures. The training must be provided prior to allowing the foster parent or caregiver to administer the medication. A pharmacist, licensed physician, or registered nurse must conduct the training. The trainer must assess each participant after the training, to ensure that the participant has learned the course content. While this is a new rule, it encompasses the current contractual requirement for agencies caring for CPS children. Agencies and homes were surveyed to determine those that either do not provide the required training, or those that offer the training but do not use an instructor meeting the qualifications. The cost will be recurring. Cost estimates are calculated by applying an hourly training rate of \$71 to the estimated number of hours to be provided. Estimates ranged from \$355 to \$4,260 per agency. Based on the survey data, the estimated average cost is \$0.16 per \$100 of revenue. An estimated 21% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.941): This section is a new rule that requires the annual training for caregivers to be designed to be appropriate for the children they are serving based on the age of the child and the child's needs. Agencies and homes were asked to review their current training objectives and based on their experience providing training, to estimate the fiscal impact of implementing any changes from this rule. The cost will be recurring. Cost estimates ranged from \$2,000 to \$122,000 per agency. The estimated average cost is \$0.93 per \$100 of revenue. An estimated 25% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.945 and §749.939): This section requires that annual training on psychotropic medications, including post-training assessment of the participants, must be conducted by a pharmacist, licensed physician, or registered nurse. While this is a new rule, it encompasses the current contractual requirement on agencies and homes caring for CPS children. As more children in placement are prescribed psychotropic medications, it is necessary to ensure caregivers and staff know how to administer these medications and their effects. The cost will be recurring. Agencies and homes were asked to provide an estimate of the fiscal impact of this rule based on the training they currently provide or would provide under the requirements. Some indicated they could handle this within current resources while others estimated costs ranging to a high of \$19,000. The estimated average cost is \$0.26 per \$100 of revenue. An estimated 29% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.401 (§749.981): This section does not allow caregivers to be the sole caregiver for a group of children unless the caregiver has current certifications for first aid, with rescue breathing and choking, and CPR for infants, children, and adults. A foster parent who is a health professional can use documentation of knowledge and training from their employment in lieu of this training requirement. Current rule requires only that the primary caretaker have CPR and first-aid training. Agencies and homes were asked to provide an estimate of the fiscal impact of this rule based on the policy decisions they antic-

ipate making in order to achieve compliance. Compliance could be achieved in many different ways and the cost would vary accordingly. The cost will be recurring. Cost estimates ranged from \$0 to \$15,000 per agency. The estimated average cost is \$0.35 per \$100 of revenue. An estimated 100% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.451 (§749.1003): This rule added to the list of child rights the right to have services provided in a language, or any other means, that is understandable to the child. Current rules do not address this as a right, and this rule incorporates the Federal regulation that is part of Title VI of the Civil Rights Act of 1964. A child placed with foster parents who cannot speak the child's language must be provided an interpreter or other means for the foster parents to communicate in the child's own language, or have at least one person at the home at all times who is able to communicate in the child's own language. The cost will be recurring. Agencies and homes not currently meeting this standard were asked to estimate the cost of providing services in the manner required. Although many agencies and homes were already in compliance with this current federal law, this cost was calculated from estimates ranging between \$0 and \$175,200. The estimated average cost is \$0.95 per \$100 of revenue. An estimated 29% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.451 (§749.1005): This rule requires a home to inform children and/or parents of the child's rights within 24 hours of acceptance of the child. The rights must be written in simple, non-technical terms in the primary language of the person being informed. If the person being informed of the child's rights has a visual or auditory impairment, the explanation must be provided in a manner that is understandable to that person. Current rules have requirements about what a child's rights should be, but there is no requirement on how these rights should be presented to the child and parent. It is anticipated that this rule will help ensure the child adjusts better to the placement setting if he knows what can be expected. The cost will be recurring. Agencies and homes not currently in compliance with this rule were asked to estimate the cost of providing the required communications. This cost was calculated from estimates ranging between \$1,000 and \$50,000. The estimated average cost is \$0.25 per \$100 of revenue. An estimated 27% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.451 (§749.1015): This rule requires an adult of the same gender as the child to witness searches of a child over five years old that involves the removal of clothing. This new rule is designed to ensure children are protected from abuse and to add protections for the caregiver in ensuring the search was done appropriately. The cost will be recurring. Agencies and homes not currently in compliance with this rule were asked to estimate the cost of complying with this requirement. Cost estimates ranged from \$3,000 to \$15,000. The estimated average cost is \$1.14 per \$100 of revenue. An estimated 6% of the agencies and homes are potentially impacted. It should be noted that agencies have the option of whether to allow these searches, so there could be zero-cost.

Fiscal Impact for Proposed §750.501 (§749.1111): This section requires a foster home to provide orientation for a newly admitted child. For younger children, orientation must be geared to the intellectual level of the child. This is a new rule for independent foster homes, but is a rule for other residential child-care operations. Homes should be required to ensure that a child is aware at admission of the agency's policies and procedures to

help with the child's adjustment to the placement. The cost will be recurring. Agencies and homes not currently in compliance with this rule were asked to estimate the cost of complying. Cost estimates ranged from \$0 to \$10,000. The estimated average cost is \$0.25 per \$100 of revenue. An estimated 22% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.601 (§749.1301): This section requires the home to complete a preliminary service plan within 72 hours of the child's admission. This is a current rule for residential treatment centers and is required contractually by CPS for all children in foster care at the specialized level of care. The new rule requires a more detailed plan for children receiving treatment services. All other children would need a preliminary service plan developed within 72 hours that simply addresses their immediate needs--the rule does not specify who must develop this plan. The cost will be recurring. Agencies and homes impacted were asked to furnish information on number of admissions, staff time to prepare plans, and other costs of complying with the requirement for preparing these preliminary service plans within 72 hours of a child's admission. A standard child placement staff salary of \$34,823, or \$17 per hour, was applied to the estimate of additional staff time needed to comply. Cost estimates ranged from \$3,000 to \$15,000. The estimated average cost is \$1.42 per \$100 of revenue. An estimated 39% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.601 (§749.1309): This section requires for a child 13 years old or older, the service plan must contain a plan for educating the child on: healthy interpersonal relationships, healthy boundaries, pro-social communication skills, sexually transmitted diseases, and human reproduction. This is a new rule and ensures that children are given necessary information about physical and emotional development. The cost will be recurring. Agencies and homes not already including these topics in the service plans were asked to estimate the cost of meeting this standard. Cost estimates ranged from \$0 to \$250,000. The estimated average cost is \$0.53 per \$100 of revenue. An estimated 61% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.601 (§749.1333): This section requires if there is a change in placement as a result of a change in the child's needs, the service plan must be reviewed and updated accordingly. If the change in placement is not a result of changes in needs, the service planning team may approve reviewing the plan on the original schedule. The current rule requires each home to have a policy for service plan reviews that addresses issues of placement disruption and planned subsequent placements in addition to regular reviews. This is also a currently required contractual term for homes that care for CPS children, so only those agencies that do not care for CPS children would be impacted. The cost will be recurring. Homes not already in compliance with the rule were asked to provide estimates of how many times a year placements are changed due to a change in the child's needs and how many hours are needed to review the service plan when this occurs. An hourly rate of \$15 was applied to the estimate of additional staff time needed to comply with the rule. The estimated average cost is \$0.37 per \$100 of revenue. An estimated 19% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.601 (§749.1335): This section requires that a review and update of a service plan must include an evaluation of any psychotropic medications prescribed for the child, any change in psychotropic medications since the

last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents. There are no current rules regarding a review of the use of psychotropic medications, although there is a requirement to address the medical needs of the child and review how those needs were met. Homes that contract with CPS are already required to meet this rule, which is likely the reason there are so few agencies impacted. The cost will be recurring. Homes not already in compliance with the rule were asked to estimate the cost of including an evaluation of psychotropic medications to the review and update of a child's service plan. An annual cost was estimated by applying this per child cost to an estimated number of children per year. The estimated average cost is \$1.83 per \$100 of revenue. An estimated 9% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.601 (§749.1339): This section requires that the intellectual functioning of a child diagnosed as mentally retarded must be re-evaluated at least annually by a psychologist until the child is 10 years old and every two years thereafter; or a psychologist must determine the frequency for a specific child's intellectual functioning to be re-evaluated. This determination, including justification for the timeframe, must be documented in the child's record annually by the service planning team. Current rule does not include the option for a psychologist to determine the time frame for a specific child. The rule was added at the request of providers and advocates. The cost will be recurring. Homes not already in compliance with the rule were asked to estimate the cost of complying with the options in the rule regarding the timeframes for re-evaluations of the intellectual functioning a child diagnosed as mentally retarded. The estimated average cost is \$0.05 per \$100 of revenue. An estimated 19% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.701 (§749.1611): This section requires that if a child takes psychotropic medications, the prescribing physician, or physician monitoring the child's use of the psychotropic medication, must evaluate the appropriateness of continuing the medication on at least a quarterly basis. If a health-care professional does not substantiate the effectiveness of a specific psychotropic medication within 90 days, the health-care professional must provide a written rationale for continuing the medication for an additional period. This additional period must not exceed 90 days if effectiveness is not substantiated. A copy of the written rationale must be documented in the child's record. Current rule requires if mind-altering or behavior-modifying medications are ordered for a child, the appropriateness of continuing the medication must be evaluated by the prescribing physician on at least a quarterly basis. This rule is compatible with the contractual requirements for homes that contract for the placement of CPS children. The cost will be recurring. Homes not already in compliance with the rule were asked to provide estimates of the cost of implementing the rule and other information that would enable an analysis to be made. While many agencies and homes were complying with all parts of this rule, others were in partial compliance. The estimated average costs range from \$0.23 to \$0.98 per \$100 of revenue. An estimated 3% to 16% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.701 (§749.1645): This section states that bed rails that extend the entire length of the bed are prohibited as a protective device, except for children with primary medical needs if authorized by a physician. This is a new rule designed to ensure bed rails are not used to restrain children, since preventing a child from getting out of bed would be

a personal restraint. The cost will be recurring. Agencies and homes not already in compliance with the rule were asked to estimate the cost of implementing a prohibition on bed rails. The exception for children with primary medical needs was a revision to the proposed rule made after the survey was complete. Thus the survey data, which did not consider the impact of that change, indicated an estimated average cost is \$0.17 per \$100 of revenue with an estimated 9% of the agencies and homes potentially impacted. It seems reasonable to conclude that the changes will reduce the estimated cost and the number of agencies and homes impacted, although no data is available to restate the original estimates.

Fiscal Impact for Proposed §750.801 (§749.1807): This rule stipulates specifications and safety requirements for cribs. The rule incorporates the recommendations of the Consumer Product Safety Commission. This should be a one-time cost to agencies that are not in compliance. Agencies and homes were asked to furnish information on the number of cribs in use and what percentage of those cribs meets all the specifications in the rule. By applying an estimated cost per crib to the number of cribs that would need to be replaced, the estimated fiscal impact can be calculated. The survey data indicates that there are estimated to be 951 cribs in use, and 107 of these do not meet the specifications of the rule. There is an estimated cost of \$235 per crib. The estimated average cost is \$0.06 per \$100 of revenue. An estimated 22% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.801 (§749.1809): This section allows the use of mesh-cribs or port-a-cribs that meet stated specifications and safety requirements. The rule incorporates the recommendations of the Consumer Product Safety Commission. This should be a one-time cost to homes that are not in compliance. Agencies and homes were asked to furnish information on the number of cribs in use and how many of those do not meet all the specifications in the rule. By applying an estimated cost per crib of \$235 to the number of cribs that would need to be replaced, the estimated average cost is \$0.08 per \$100 of revenue. An estimated 6% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.801 (§749.1861): This section states a home must offer nutritional counseling and guidance to a pregnant child and this counseling must be documented in the child's record. This is a new rule that is necessary since teen mothers are often not aware of their own nutritional needs or the nutritional needs of their unborn child. This rule ensures some attempt is made to provide for the health and safety of the mother and child. Homes have a variety of options in how to ensure this counseling is offered. The cost will be recurring. Agencies and homes were asked to determine if someone on their staff was qualified to provide the appropriate nutritional counseling. In addition, they were asked to choose from a list of other possible actions they could take to ensure the counseling was provided and to provide a cost estimate for their selection. The most significant component of the cost estimate is the cost of transportation, which represents approximately 94% of the total cost estimate. The estimated average cost is \$4.71 per \$100 of revenue. An estimated 6% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.801 (§749.1959): If a foster parent, in order to manage a child's behavior, restricts the child's activities for more than seven days or restricts a child to a room or building for more than 48 hours, the parent must review the restrictions with the treatment director or service planning team

and document this review in the child's record. Current rule requires documentation any time that the child is restricted to the home for more than 24 hours. This change ensures the appropriate home staff are aware of the restrictions and ensures that activity restrictions do not become punitive or abusive and do not interfere with needed treatment activities. The cost will be recurring. Agencies and homes were asked to identify the people involved in conducting and documenting a review of restrictions on a child and to estimate the number of hours each would spend on this activity. Fiscal impact was calculated by applying estimated salary costs to those hours. The estimated average cost is \$0.56 per \$100 of revenue. An estimated 24% of the agencies and homes are potentially impacted. Agencies and homes do have the option of whether to allow this type of discipline at all which would be a zero cost.

Fiscal Impact for Proposed §750.901 (§749.2301 and §749.2303): These sections require that caregivers involved in the emergency behavior intervention of a child must debrief with the executive director, professional services provider, or child's case manager concerning the incident immediately or as soon as possible after the situation has stabilized, revisit the child's input on preferred de-escalation techniques, and document the debriefing in the child's record. Caregivers involved in the emergency behavior intervention of a child must make every effort to debrief with the children in care who witness the incident. At each review of a child's service plan, the home must evaluate the use, frequency, patterns, and effectiveness of emergency behavior intervention techniques. Current rule requires that after a personal restraint, staff involved must make every attempt to debrief concerning the incident. This new rule provides more specificity in what must be done during a follow-up to any emergency behavior intervention and includes the requirement for caregivers, not just staff, to be involved in the follow-up. It ensures that home staff and caregivers are reviewing the application of those interventions in a timely manner and that the interventions are appropriate. It also affords an additional protection for caregivers who may be accused of inappropriate use of restraint or seclusion. The cost will be recurring. Agencies and homes were asked to estimate the cost of implementing the rule in its entirety. The estimated average cost will range from \$0.19 to \$2.66 per \$100 of revenue depending on the extent of current compliance and the number of changes that would be necessary. An estimated 36% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.901 (§749.2381 and §749.2383): These sections require that, as part of an annual overall evaluation, a home must focus on the frequency, patterns, and effectiveness of specific emergency behavior interventions. It must collect and document aggregate numbers of behavior interventions reported quarterly by type of intervention. Data must be reviewed quarterly and maintained for at least five years for review by Licensing. Current rule for other residential child-care operations require the evaluation; however, the requirement to collect and document aggregate numbers is new for all. This requirement is recommended by all national organizations as good practice for child-care operations and ensures the data is available for agencies to make necessary revisions to policies and trainings. It also provides Licensing with information on a regular basis about the use of emergency behavior interventions that can be used in reviewing how the rules on those interventions are applied by individual homes. The cost will be recurring. Agencies and homes not already doing so were asked to estimate the cost of collecting data and

performing a review of emergency behavior interventions at least quarterly. Individual estimates received ranged from \$0 to \$27,500. The estimated average cost is \$0.10 per \$100 of revenue. An estimated 23% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1001 (§749.2551): This section states a foster family home may care for no more than six children, including children of the foster family, children receiving respite care, and children for whom the family provides regular day care. All adults and children in care must be counted in the capacity of the home. Current rules regarding home capacity do not address children in respite care, and there has been confusion about how these children should be counted. This rule is in compliance with statute regarding the capacity of foster homes. The cost will be recurring. Agencies and homes not determining capacity of a home in accordance with the rule were asked what actions they would take if they found a capacity problem after implementing the rule and to estimate the cost of those actions. Two responders stated that the provision of respite care was the primary cause of homes exceeding capacity. The estimated average cost is \$0.58 per \$100 of revenue. An estimated 13% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1001 (§749.2553): This section states a foster group home may care for no more than 12 children, including children of the foster family and children receiving respite care. All adults and children in care must be counted in the capacity of the home. Current rules regarding home capacity do not address children in respite care, and there has been confusion about how these children should be counted. This rule is in compliance with statute regarding the capacity of foster homes. The cost will be recurring. Agencies and homes not determining capacity of a home in accordance with the rule were asked what actions they would take if they found a capacity problem after implementing the rule and to estimate the cost of those actions. The estimated average cost is \$0.07 per \$100 of revenue. An estimated 7% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1001 (§749.2561 and §749.2563): These sections state the child/caregiver ratio in a foster home is based on the age of the youngest child in the home, number of children receiving treatment services, and number of children with primary medical needs. The number of children one caregiver may supervise in a foster family home is six, and in a foster group home it is eight, although either may be less when affected by other criteria. The cost will be recurring. Agencies and homes were asked their current practices regarding ratio requirements. The ratios provided in the survey responses were then compared to the ratios in the proposed rules and the agencies potentially impacted were identified. A cost estimate was calculated based on the number of additional homes needed to accommodate the same number of children while complying with the proposed ratios. Survey data on the cost per home was then used to estimate the impact. The estimated average cost is \$0.43 per \$100 of revenue. An estimated 56% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1001 (§749.2631): This section establishes rules regarding the length and frequency under which a child may be in respite care before it is considered a new placement. This is a new rule; there are no current rules on respite care. It is consistent with current contractual requirements for agencies accepting placement of CPS children. This rule places time limits on the length of a respite care placement

for a child in order to ensure the continuity of care for children. The cost will be recurring. Agencies and homes were asked to compare their current respite care policies to the various requirements found in the rule and estimate the cost of incorporating all elements into their policies. Cost estimates ranged from \$0 to \$100,000. The estimated average cost is \$0.14 per \$100 of revenue. An estimated 77% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1101 (§749.2909): This section requires each home to have a working smoke detector in hallways or open areas outside sleeping rooms and on each level of a home with multiple levels. Depending on the size and layout of the home, others could be needed based on manufacturer or fire marshal instructions. This is a new rule and is in compliance with recommendations from fire marshal and manufacturer instruction. The cost will be recurring. Agencies and homes were asked the number of smoke detectors needed to meet the requirement. Applying a standard cost of \$12.40 per detector to the number indicated yields the estimate of the fiscal impact. The estimated average cost is \$0.07 per \$100 of revenue. An estimated 15% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1101 (§749.3071): This section requires homes to have written approval from a licensed physician or a registered or licensed dietitian to serve a child a therapeutic or special diet. Dietary alternatives must be available for a child who has special health needs. This is a new rule to ensure children receive food that meets daily nutritional needs. The cost will be recurring. Agencies and homes not already in compliance with the entire rule were asked to provide an estimate of the cost of implementing any of the parts that would be necessary to meet each the requirements. Cost estimates ranged from \$0 to \$12,000. The estimated average cost is \$0.06 per \$100 of revenue. An estimated 24% of the agencies and homes are potentially impacted.

Fiscal Impact for Proposed §750.1101 (§749.3137): This rule establishes additional child/caregiver ratios for swimming activities. Current rules only require that operations and foster homes meet current caregiver/child ratios. The cost will be recurring. Agencies and homes were asked how they currently manage child/caregiver ratios during swimming activities. If they are taking no steps beyond simply maintaining regular non-swimming ratios, the assumption is that additional caregivers would be needed in order to comply with the rule. The number and cost of additional caregivers is calculated based on the numbers and ages of children in care, an assumption that all are involved in swimming activities for at least three months a year, half the additional caregivers will be part-time or volunteers, and a standard cost of a caregiver's salary which is estimated to be \$18,665. Cost estimates ranged from \$20,997 to \$349,950. The estimated average cost is \$4.10 per \$100 of revenue. An estimated 34% of the agencies are potentially impacted. Increased use of volunteers beyond that assumed in the analysis would further reduce the cost, and could potentially eliminate it altogether.

Fiscal Impact for Proposed §750.1101 (§749.3143): This rule requires that when children are swimming, at least one caregiver counted in the child/caregiver ratio must be able to swim and perform a water rescue. Current rule for foster group homes only requires a certified lifeguard on duty when the home's swimming area is in use. There is no current rule for foster family homes. The cost will be recurring. Agencies and homes were asked to provide an explanation of the steps they would take to ensure

compliance with this rule and to estimate the cost of those actions. If the rule represents no change from current practices, they were asked to state that in their response and no fiscal impact was assumed. The survey questions and responses were based on an earlier version of the rule that required all caregivers counted in the ratio to be able to swim. This information indicated an estimated average cost of \$0.08 per \$100 of revenue and an estimated 57% of the agencies and homes are potentially impacted. Although the survey data does not provide sufficient detail to re-calculate the cost impact based on the revised rule requirements of only one person being able to swim and able to perform a water rescue, it seems reasonable to assume that the changes to the rule would result in a reduced cost, and fewer agencies and homes impacted, but no revised estimate of the amounts is available. In any event, agencies and homes could comply with this rule by using all volunteers, which would be a zero cost for the agencies.

Questions about the content of the proposal may be directed to Carol Allen at (512) 438-5339 in DFPS' Licensing Division. Electronic comments may be submitted to rcdstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-330, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DFPS will hold a public hearing on the proposal on Thursday, March 23, 2006, from 2:00 p.m. until 6:00 p.m. in the John H. Winters Building Public Hearing Room, 125-E, 701 West 51st Street, Austin, Texas. Persons with disabilities planning to attend this meeting who may need auxiliary aids or services should contact Amy Chandler at (512) 438-3134 by March 20, 2006, so appropriate arrangements can be made.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §§750.1, 750.3, 750.5

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.1. What is the purpose of this chapter?

The purpose of this chapter is to set forth the rules that apply to independent foster family homes and independent group homes.

§750.3. Who is responsible for complying with the rules of this chapter?

You, the permit holder must ensure compliance with all rules of this chapter at all times, with the exception of those rules identified for specific types of child-care services or activities that your operation does

not offer. For example, if we license you to offer only core child-care services, you are not required to comply with rules that apply only to treatment services or transitional living services; however, you must comply with all other applicable rules as stated in this chapter.

§750.5. How must I interpret the different terminology used in the requirements of Chapter 749 of this title (relating to Child-Placing Agencies)?

(a) The rules of this chapter require you to comply with certain requirements of Chapter 749 of this title. The language of Chapter 749:

(1) Addresses child-placing agencies or the homes that the agencies verify, including foster homes, foster family homes, and foster group homes. For the purposes of this chapter, you must substitute the terminology of Chapter 749 as follows:

Figure: 40 TAC §750.5(a)(1)

(2) In some instances requires some action, review, or approval by child placement staff or child placement management staff. For the purposes of this chapter, those actions, reviews, or approvals must be completed by the service planning team. In other words, you must substitute "service planning team" for "child placement staff" or "child placement management staff".

(b) If you must comply with a requirement in Chapter 749 of this title that has an exemption, this exemption applies to you. If, as written in Chapter 749, an applicable exemption is contingent on the date that a child-placing agency verified the home, the applicability of this exemption to you would be contingent on whether we licensed you by that date. Any other condition of the exemption would apply to you as written.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601327

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §750.41, §750.43

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.41. What do certain pronouns mean in this chapter?

The following words have the following meanings when used in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Department of Family and Protective Services (DFPS).

§750.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?) and §749.43 of this title (relating to What do certain words and terms mean in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Foster family home--A single independent home that is the primary residence of the foster parent(s) and provides care for six or fewer children, up to the age of 18 years.

(2) Foster group home--A single independent home licensed:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children, up to the age of 18 years; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children, up to the age of 18 years.

(3) Foster home--As referred to in this subchapter means both types of homes, foster family homes and foster group homes.

(4) Foster parent--A person who provides foster care services in the foster home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601328

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. SERVICES

40 TAC §750.61

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.61. What are the requirements regarding services?

You must comply with Division 2, Subchapter B of Chapter 749 of this title (relating to Services).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601329

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§750.101, 750.103, 750.105, 750.107

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.101. What are my responsibilities as the permit holder before I begin operating?

Before you begin operating, you are responsible for:

(1) Ensuring that your home is legally established to operate within Texas and complying with all applicable statutes;

(2) Submitting documentation to us that proves the legal basis of your operation;

(3) Establishing the governing body of your home;

(4) Submitting documentation to us on the ownership of your foster home. This includes names, addresses, titles, and telephone numbers for the following persons:

(A) For corporations, the officers and/or the executive committee of the governing body;

(B) For jointly or individually owned foster homes, the partners or owners; and

(C) For associations, the persons and/or interests represented by the association;

(5) Having a governing body that is responsible for, and has authority over, your home's policies and activities;

(6) Having policies that clearly state the responsibilities of the governing body;

(7) Developing operational policies and procedures that comply with or exceed the rules specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(8) Developing and providing us your plan for ensuring that:

(A) We are continually informed of any changes in the location of all records, and any changes in your personnel and professional employees; and

(B) You and your employees contact Statewide Intake (SWI) to report serious incidents and allegations of abuse and neglect.

§750.103. What are my operational responsibilities as permit holder?

When you begin operating, you must:

(1) Operate according to the written policies and procedures adopted by the governing body;

(2) Maintain accurate and current records for us to review;

(3) Maintain a current roster of all children in care, including the type of treatment services being received by each child (as applicable), and have this roster available to us for review at any time;

(4) Allow us to inspect your home at any time;

(5) Display your permit at your home;

(6) Observe the conditions of permit;

(7) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(8) Maintain liability insurance as required by the Human Resources Code, §42.049;

(9) Comply with Chapter 42 of the Human Resources Code, all other applicable laws and rules of the Texas Administrative Code; and

(10) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a prohibited controlling person.

§750.105. What responsibilities do I have for personnel policies and procedures?

You must:

(1) Develop a written organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Develop written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Develop written policies on the training requirements for caregivers and employees;

(4) Ensure that personnel policies comply with personnel requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) Report or ensure your employees and caregivers report suspected abuse, neglect, or exploitation as required by the Texas Family Code, §261.401;

(6) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality;

(7) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?); and

(8) Report to the Licensing Division within 24 hours after learning of an allegation that a person under the auspices of the foster home who directly cares for or has access to a child has abused drugs within the past seven days.

§750.107. What must my conflict of interest policies include?

You must have conflict of interest policies that address a code of conduct on the relationship between employees, professional service providers, children in placement, foster parents, and children's families.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601330

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. GOVERNING BODY

40 TAC §750.121, §750.123

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.121. What are the specific responsibilities of the governing body?

The governing body is responsible for:

(1) Ensuring the home remains fiscally sound;

(2) Overseeing and ensuring the management of the home's services and programs in compliance with your policies;

(3) Approving and having authority over the operational policies and activities which must comply with rules of this chapter;

(4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code; and

(5) Carrying out the governing body responsibilities assigned in the foster home's policies and procedures.

§750.123. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

You must provide to us in writing any change in:
Figure: 40 TAC §750.123

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601331

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. FISCAL REQUIREMENTS

40 TAC §750.131, §750.133

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.131. What are my general fiscal requirements?

(a) You must establish and maintain your home on a sound fiscal basis.

(b) You must maintain complete financial records.

(c) You must have a fee policy that clearly describes what fees you charge and what services the fees cover, or you must have a written contract that clearly describes your charges for foster care services.

§750.133. What are my specific fiscal requirements?

You must:

(1) Submit documentation to us of a 12-month budget of income and expenses with the application for a new permit;

(2) Submit documentation to us of reserve funds or available credit at least equal to operating costs for the first three months of operation with the application for a new permit;

(3) Have predictable funds sufficient for the first year of operation;

(4) Demonstrate at all times that you have or will have sufficient funds to provide appropriate services for all children in your care; and

(5) Account for a child's money separately from your foster home funds. No child's personal earnings, allowances, or gifts may be used to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give the child's money to the child, parent, or next placement upon discharge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601332

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. FOSTER HOME POLICIES

40 TAC §§750.151, 750.153, 750.155, 750.157, 750.159, 750.161, 750.163, 750.165, 750.167, 750.169, 750.171

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.151. What are the requirements regarding the home's policies?

(a) The policies that we require must be written and they must indicate the approval of the governing body, date of approval, and effective date.

(b) The policies must be clearly stated and comply with the rules of this chapter.

(c) The governing body must approve the policies.

(d) All employees and caregivers must be made aware of and follow your home's policies and procedures. A copy of your home's policies and procedures must be maintained at the foster home and available for review by an employee or a caregiver.

(e) All policies must be available for review by our staff and your clients, upon request.

(f) You must report any significant changes to the policies to us at least seven days before implementing the change.

(g) You must maintain copies of all current and previous policies for at least two years.

§750.153. What are the requirements for my admission policies?

(a) Your admission policies must:

(1) Describe the age range, gender, and types of treatment services you provide; and

(2) Indicate whether you will admit children on an emergency basis.

(b) You may not accept children unless you can document at admission that there is no conflict in the care of all children in the home.

(c) If you provide treatment services, you must have admission policies describing the behavioral and/or emotional disorders and/or

physical or developmental disorders that your program is designed to treat.

(d) If a change in your admission policies will result in a change to the conditions on your permit, you must obtain approval from us before implementing the change.

§750.155. With whom must I share my admission policies?

You must give copies of your admission policies to employees, contract staff, and caregivers.

§750.157. What child-care policies must I develop?

Your must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;

(3) The child's rights to correspond by telephone with family members and friends;

(4) The child's rights to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

(5) Personal possessions a child is or is not allowed to have;

(6) Emergency behavior intervention techniques;

(7) Discipline policies including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:

(A) Guide employees and caregivers in methods used for discipline of a child in care;

(B) Include measures for positive responses to appropriate behavior;

(C) Make clear that discipline of any type is inappropriate and not permitted for infants and toddlers; and

(D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;

(8) Any religious program or activity that you offer, including whether children are required to participate in religious activities with caregivers or staff;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the home are allowed and what protocols will be used;

(11) Program expectations and rules for children;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and child-birth, if you admit and/or care for a pregnant child; and

(16) Your plan for providing health-care services to a child with primary medical needs.

§750.159. What emergency behavior intervention policies must I develop?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions, including risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) How you will meet the following requirements:

(A) During admission, explain and document the following to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you authorize;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments on any emergency behavior intervention; and

(ix) The process for making comments on any emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) At admission, requirements for obtaining each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process, and revisiting this information with the child and caregivers during each post emergency behavior intervention discussion;

(6) Requirement that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the need for the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home; or

(B) A client or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home.

§750.161. What policies must I develop on the discipline of children in foster care?

You must develop policies that guide caregivers in methods used for discipline of children in foster care and include:

(1) Measures for positive responses to appropriate behavior;

(2) If you work with infants and toddlers, a statement that discipline of any type is not appropriate or permitted for that age group; and

(3) The importance of nurturing behavior, stimulation, and promptly meeting the child's needs.

§750.163. What foster care policies must I develop?

You must develop foster care policies that include the following:

(1) Qualifications, screening, and selection procedures for caregivers who can meet the needs of children your home serves;

(2) Criteria for making decisions about the number, ages, gender, and needs of children who may be placed in your foster home;

(3) Pre-service and annual training requirements for caregivers; and

(4) Policies on how I will provide services if the home provides more than one type of service.

§750.165. What additional policies must I develop if my home provides treatment services?

You must develop additional policies if your home provides treatment services. These policies must include:

(1) Ongoing assessments of the caregiver's abilities to deal with the needs of the children in care;

(2) Safeguards for protecting the children and caregivers; and

(3) Emergency back-up and support systems for the caregivers.

§750.167. What policies must I develop if I offer a transitional living program?

If you offer a transitional living program, you must develop policies that address the following:

(1) Criteria used to select participants for the program;

(2) Supervision of participants;

(3) Expected behaviors of participants and consequences for failure to comply;

(4) Training, education, and experiences to be achieved in the program; and

(5) Roles of participants and caregivers.

§750.169. What policies must I develop for babysitters and respite care in my foster home?

You must develop policies for babysitters and respite care which include:

(1) Minimum age for care providers;

(2) Minimum amount and type of prior child-care experience that a provider must have;

(3) Amount and type of training a provider must have;

(4) Reference and background information that you must obtain before using the provider;

(5) Amount of time a provider can care for children;

(6) Number of children that a provider can care for;

(7) Information that you must share with a provider, including information about the children in care and emergency contact information;

(8) Specific care instructions that you must share with a provider for children with treatment needs;

(9) A method for contact between you and the provider during the time of the provider's care; and

(10) A requirement that documentation of the provider restrictions and arrangements will be in your records.

§750.171. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include volunteer job descriptions and/or responsibilities;

(2) Address volunteer qualifications, screening and selection procedures, and orientation and training programs; and

(3) Address supervision of volunteers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601333

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 5. CLIENTS AND APPEALS

40 TAC §§750.181, 750.183, 750.185

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.181. Who are my clients?

- (a) Your child clients include children in foster care.
- (b) Your adult clients include birth parents, managing conservators, or person(s) with legal responsibility for the child.
- (c) Anyone can call you for information or attend a meeting open to all interested persons, but a person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.

§750.183. What rights do my adult clients have?

You must inform your adult clients:

- (1) That the rules of this chapter, the compliance status reports, and your policies are available for review upon their request;
- (2) Of their right to appeal foster home actions and decisions that affect them, and the procedures for making an appeal; and
- (3) Of procedures for making a complaint to us.

§750.185. What must my appeal process include?

- (a) You must have a written appeal process for your adult clients in regard to your actions and decisions that affect those clients.
- (b) The process must describe:
 - (1) How you will inform clients of their right to appeal;
 - (2) The procedures for making an appeal;
 - (3) Who will hear an appeal and make the decision;
 - (4) How the person who requests an appeal will find out about the decision;
 - (5) Time frames for making a decision and communicating the decision to the complainant; and
 - (6) The basis for an appeal decision.
- (c) You must provide this information to each birth parent, foster parent applicant, or adoptive applicant before you make that person your client.
- (d) Your appeal process does not have to involve anyone from outside your foster home. An internal review procedure is sufficient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601334

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. SERIOUS INCIDENT REPORTS; GENERAL REQUIREMENTS FOR ALL RECORDS; AND PERSONNEL RECORDS

40 TAC §750.201

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.201. What are the requirements for reports and record keeping?

You must comply with:

- (1) Division 1, Subchapter D of Chapter 749 of this title (relating to Serious Incident Reports);
- (2) Division 2, Subchapter D of Chapter 749 of this title (relating to General Requirements for All Records); and
- (3) Division 3, Subchapter D of Chapter 749 of this title (relating to Personnel Records).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601335

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. CLIENT RECORDS

40 TAC §§750.231, 750.233, 750.235, 750.237, 750.239, 750.241, 750.243, 750.245

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.231. What client records must I maintain?

You must maintain complete, current, individual client records for all children in care.

§750.233. Where must I maintain active records for clients?

You must maintain the active case record for a child at the foster home.

§750.235. What is an active record for a child?

An active child record consists of the child's most recent 12 months of service.

§750.237. What information must an active child record include?

For each child, the active record must include:

(1) The child's full name and another method of identifying the child, such as a client number;

(2) Documentation of known allergies on the exterior of the child's record or in another location where the information is clearly visible to persons with access to the record; and

(3) The date of each data entry and the signature of the person who makes the data entry.

§750.239. How must I maintain an active child record?

On an on-going basis, you must ensure that each child's record is:

(1) Kept accurate and current;

(2) Locked and kept in a safe location or locations; and

(3) Kept confidential as required by law.

§750.241. Where must I maintain archived client records?

(a) You must maintain archived client records at the foster home and/or in a central administratively designated location.

(b) You may archive entire closed client records electronically.

(c) Your system for maintaining all client records must be uniform.

(d) You must maintain a master list of archived client records and their location in the foster home.

§750.243. Who must consent to the release of a child's record?

Unless you are releasing information to a parent or us, you may not release any portion of a child's record to any agency, organization, or individual without the written consent of the person legally authorized to consent to the release.

§750.245. How long must I maintain client records?

(a) You must maintain complete child records for a child placed in foster care:

(1) For at least two years after the child is discharged; and

(2) Until the resolution of any investigation of a serious incident that occurred while the child was in care with your foster home.

(b) You must maintain records on your foster home for at least five years after the foster home is closed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601336

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER E. FOSTER HOME STAFF AND CAREGIVERS

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §750.301

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.301. What are the general requirements for foster home staff and caregivers?

You must comply with Division 1, Subchapter E of Chapter 749 of this title (relating General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601337

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 2. EXECUTIVE DIRECTOR

40 TAC §750.331, §750.333

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.331. What qualifications must an executive director meet?

Your foster home's governing body must determine the qualifications for the executive director. The executive director must meet the qualifications established by your foster home.

§750.333. What are the responsibilities of the executive director?

(a) Your executive director has overall responsibility for your foster home.

(b) Your executive director must be responsible for or assign responsibility for:

(1) Administering and managing the foster home according to the policies adopted by the governing body;

(2) Ensuring that the foster home complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(3) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations; and

(4) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the foster home.

(c) If the executive director is absent from the foster home on a frequent and/or extended basis, the executive director must designate an employee of the foster home who is responsible for the program and must administer the foster home in the executive director's absence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601338

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 3. TREATMENT DIRECTOR

40 TAC §§750.351, 750.353, 750.355

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.351. Must I have a treatment director?

(a) If you provide treatment services, you must employ or contract with someone that meets the qualifications of a treatment director that:

(1) Will be responsible for your overall treatment program, including clinical responsibility for the management of your therapeutic interventions; and

(2) Provide direction and overall management of your treatment program.

(b) When assigning responsibilities to your treatment director, you must ensure that the treatment director can oversee the treatment of all children receiving treatment services.

§750.353. What qualifications must a treatment director have?

(a) A treatment director that provides or oversees treatment services for children with mental retardation or children with pervasive developmental disorders must be:

(1) Licensed as a psychiatrist, psychologist, professional counselor, clinical social worker, marriage and family therapist, or registered nurse; or

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field and have three years of experience working with children with mental retardation or a pervasive developmental disorder.

(b) A treatment director that provides or oversees treatment services for children with primary medical needs must be a physician or a licensed registered nurse.

(c) A treatment director that provides or oversees treatment services for children with emotional disorders must:

(1) Be a psychiatrist or psychologist;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting.

§750.355. If I provide more than one type of treatment service, can I have one treatment director?

Yes, you can have one treatment director if he meets the required qualifications for all treatment services your foster home offers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601339

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



DIVISION 4. TREATMENT SERVICES PROVIDED BY NURSING PROFESSIONALS; CONTRACT STAFF, VOLUNTEERS, AND STUDENT INTERNS

40 TAC §750.371, §750.373

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.371. What are the requirements for treatment services provided by nursing professionals?

You must comply with Division 5, Subchapter E of Chapter 749 of this title (relating to Treatment Services Provided by Nursing Professionals).

§750.373. What are the requirements for contract staff, volunteers, and student interns?

You must comply with Division 6, Subchapter E of Chapter 749 of this title (relating to Contract Staff, Volunteers, and Student Interns).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601340

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

40 TAC §750.401, §750.403

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.401. What are the requirements for training and professional development?

You must comply with:

(1) Subchapter F of Chapter 749 of this title (relating to Training and Professional Development), with the exception of §749.861 of this title (relating to What are the pre-service experience requirements for caregivers?); and

(2) §750.403 of this title (relating to What are the pre-service experience requirements for caregivers?).

§750.403. What are the pre-service experience requirements for caregivers?

(a) If you do not care for children receiving treatment services, then there are no pre-service experience requirements.

(b) If you care for children receiving treatment services, then a caregiver must have 40 hours of supervised child-care experience in an operation or foster home that provides the same treatment services. If the 40-hour experience requirement is not met, before you may assign the person as the only caregiver responsible for a group of children, the caregiver must have at least 40 total hours of supervised child-care experience from your foster home and/or another operation or foster home that provides the same treatment services. Until the caregiver completes the supervised experience, an experienced caregiver must be physically available to supervise the caregiver at all times. The supervised child-care experience must be documented in the appropriate personnel record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601341

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER G. CHILDREN'S RIGHTS

40 TAC §§750.451, 750.453, 750.455

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.451. What are the requirements regarding children's rights?

You must comply with:

(1) Subchapter G of Chapter 749 of this title (relating to Children's Rights), with the exception of:

(A) §749.1009 of this title (relating to What right does a child have regarding contact with a parent?); and

(B) §749.1013 of this title (relating to What right to privacy does a child have with respect to his communications with others?); and

(2) §750.453 of this title (relating to What right does a child have regarding contact with a parent?), and §750.455 of this title (relating to What right to privacy does a child have with respect to his communications with others?).

§750.453. What right does a child have regarding contact with a parent?

(a) You must allow contact between a child and his parent whose parental rights have not been terminated according to:

(1) Your policies; and

(2) The provisions of a court order or any visitation agreement.

(b) You must document in the child's service plan:

(1) Plans for contact between the child and a parent; and

(2) Any decision to limit contact with a parent.

(c) Before you can temporarily restrict ongoing contacts or communication between the child and a parent, you must:

(1) Explain the reasons for the restrictions to the child and the child's parent; and

(2) Document the reasons in the child's record.

(d) Restrictions that continue more than 30 days must be re-evaluated monthly by the child's service planning team, who also must:

(1) Explain the reasons for the continued restrictions to the child and the child's parents; and

(2) Document the reasons in the child's record.

(e) If you limit communications or visits with a parent for practical reasons, such as geographical distance or expense, you must discuss the limits with the child and the child's parents. You must document the limits in the child's record.

§750.455. What right to privacy does a child have with respect to his communications with others?

(a) Except as determined by the child's service planning team or the child's managing conservator, you may not:

(1) Open or read the child's incoming or outgoing mail, including electronic mail; or

(2) Monitor the child's telephone calls.

(b) You must document in the child's record:

(1) Any reason for restricting the child's mail or telephone calls; and

(2) A listing of the mail or telephone calls that you restrict.

(c) You must inform the child and parent about restrictions that you place on the child.

(d) Restrictions that continue for more than 30 days must be re-evaluated monthly by the child's service planning team, who also must:

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601342

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER H. ADMISSION

40 TAC §750.501

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.501. What are the requirements for admission?

You must comply with:

(1) Division 1, Subchapter H of Chapter 749 of this title (relating to Admissions);

(2) Division 3, Subchapter H of Chapter 749 of this title (relating to Required Admission Information); and

(3) Division 4, Subchapter H of Chapter 749 of this title (relating to Emergency Admission).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601343

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER I. SERVICE PLANNING, AND DISCHARGE

40 TAC §750.601

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.601. What are the requirements for service planning and discharge?

You must comply with Subchapter I of Chapter 749 of this title (relating to Foster Care Services: Service Planning, Discharge).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601344

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER J. MEDICAL AND DENTAL

40 TAC §750.701

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.701. What are the requirements for medical and dental care?

You must comply with Subchapter J of Chapter 749 of this title (relating to Foster Care Services: Medical and Dental).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601345

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER K. DAILY CARE, PROGRAM MANAGEMENT

40 TAC §750.801

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.801. What are the requirements for daily care and problem management?

You must comply with Subchapter K of Chapter 749 of this title (relating to Foster Care Services: Daily Care, Problem Management).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601346

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER L. EMERGENCY BEHAVIOR INTERVENTION

40 TAC §750.901

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.901. What are the requirements regarding emergency behavior intervention?

You must comply with Subchapter L of Chapter 749 of this title (relating to Foster Care Services: Emergency Behavior Intervention).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601347

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER M. CAPACITY AND CHILD/CAREGIVER RATIO; SUPERVISION; RESPITE CHILD-CARE SERVICES; AND FOSTER FAMILY RELATIONSHIPS

40 TAC §§750.1001, 750.1003, 750.1005, 750.1007, 750.1009

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042.

§750.1001. What are the requirements for capacity and child/caregiver ratios?

You must comply with Division 5, Subchapter M of Chapter 749 of this title (relating to Capacity and Child/Caregiver Ratio).

§750.1003. What are the requirements for supervision?

You must comply with Division 6, Subchapter M of Chapter 749 of this title (relating to Supervision).

§750.1005. What are the requirements for respite child-care services?

(a) You must comply with Division 7, Subchapter M of Chapter 749 of this title (relating to Respite Child-Care Services), with the exception of §749.2627 of this title (relating to What must occur before one of my foster homes accepts a child for respite services?).

(b) You must ensure that providing respite child-care services is not a conflict of care for any other children placed in your foster home.

§750.1007. What are the requirements for foster family relationships?

You must comply with:

(1) Division 8, Subchapter M of Chapter 749 of this title (relating to Agency-Foster Family Relationship), with the exception of §749.2655 of this title (relating to When must a foster home notify you of changes that affect the foster home?); and

(2) §750.1009 of this title (When must you notify Licensing of changes that affect the foster home?).

§750.1009. When must you notify Licensing of changes that affect the foster home?

You must notify Licensing of any of the following changes as follows:
Figure: 40 TAC §750.1009

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601348
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER N. HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT

40 TAC §750.1101

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.1101. What are the requirements for health and safety, environment, space, and equipment?

You must comply with Subchapter O of Chapter 749 of this title (relating to Foster Homes: Health and Safety Requirements, Environment, Space and Equipment), with the exception of §749.2965 of this title (relating to How must I determine whether weapons, firearms, explosive materials, or projectiles are present in a foster home?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601349
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 16, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER O. ASSESSMENT SERVICES

40 TAC §750.1201

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §42.042.

§750.1201. What are the requirements to provide assessment services?

You must comply with Subchapter T of Chapter 749 of this title (relating to Additional Requirements for Child-Placing Agencies That Provide Assessment Services).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601350

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: April 16, 2006

For further information, please call: (512) 438-3437

◆ ◆ ◆

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture withdraws the emergency amendment to §20.22 which appeared in the January 20, 2006, issue of the *Texas Register* (31 TexReg 359).

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601406

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: March 26, 2006

For further information, please call: (512) 463-4075

◆ ◆ ◆

TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

22 TAC §395.7

The Polygraph Examiners Board withdraws proposed new §395.7, concerning Testing Subjects in any Language Other than English, which appeared in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8786).

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601305

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: March 1, 2006

For further information, please call: (512) 424-2058

◆ ◆ ◆

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §§20.1, 20.20 and 20.22, concerning the department's cotton pest control program requirements, without changes to the proposed text, as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 363). The amendments are adopted to update and clarify definitions, reclassify Pest Management Zone 5 as Pest Management Zone 3 Area (3), and strengthen enforcement of the Cotton Stalk Destruction (CSD) deadline.

Amendments to §20.1 are adopted to clarify the definition of non-hostable as it relates to cotton in the field, and to strengthen the definition of volunteer cotton by removing references to when incidental seeds might have germinated.

Amendments to §20.20 are adopted in response to producer requests from Pest Management Zone 5. The adopted changes will reclassify Pest Management Zone 5 to Area (3) of Pest Management Zone 3. This change will benefit producers in the affected counties by maintaining their locally appropriate planting and stalk destruction dates while improving their organizational situation. Because counties in Pest Management Zone 3 and those in Pest Management Zone 5 are adjacent and have similar production practices, combining the two zones will promote coordinated decision-making about stalk destruction requirements.

Amendments to §20.22 are adopted to implement the unanimous request of the Pest Management Zone 9 Cotton Producer Advisory Committee (CPAC) to delay their CSD deadline until March 1 and the unanimous request of the Pest Management Zone 10 CPAC to modify their stalk destruction requirements to reflect modern production practices in that area. The amendments to §20.22 are further adopted to refine procedures for processing electronically transmitted requests for individual extensions and to clarify the standards for granting individual extensions for fields that have been declared a public nuisance by the department.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1

The amendments are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and the Code, §74.004, which provides the de-

partment with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601404

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: March 26, 2006

Proposal publication date: January 20, 2006

For further information, please call: (512) 463-4075



SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The amendments are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and the Code, §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601405

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: March 26, 2006

Proposal publication date: January 20, 2006

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to P.U.C. Substantive Rules §25.454, relating to Rate Reduction Program, §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and §25.478, relating to Credit Requirements and Deposits, with changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8776). As proposed, §25.454 will: comport with the provisions of the Public Utility Regulatory Act (PURA) relating to discounts for low-income customers, as revised in the 79th Legislative Session; specify what happens to benefits for customers qualified for the rate reduction program when funding and authorization to expend funds are not sufficient for a discount to be provided and an eligibility list to be administered; specify what happens to benefits for customers qualified for the rate reduction program when the discount cannot be provided, but when an eligibility list is available to Retail Electric Providers (REPs) for the continuation of the late penalty waiver benefit; and set forth provisions for voluntary low-income programs to be administered by REPs. As proposed, §§25.454, 25.475 and 25.478 will: provide that if an up-to-date list of eligible low-income electric customers is available for use, applicants and customers who qualify for the rate reduction program will be given the opportunity to pay deposits greater than \$50 in two installments, and shall be notified of that option in the written notice of a deposit request and in the Terms of Service document; set forth the documentation that a REP can require an applicant or customer to provide to prove the applicant's or customer's eligibility; and require REPs to provide a letter upon a customer's request, stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. The provisions will also provide that if an up-to-date list of eligible low-income electric customers is not available for use, a REP will be required to extend this deposit installment option to any residential customers or applicants who qualify for the rate reduction program and notify residential customers of that option in the written notice of a deposit request. Additionally, the REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and requests on a non-discriminatory basis. This rule is a competition rule subject to judicial review as specified in PURA, Texas Utilities Code §39.001(e). Project Number 31417 is assigned to this proceeding.

The commission received comments on the proposed amendments from Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (Consumers); Mutual Energy SWEPSCO d/b/a "ME SPP"; and the REP Coalition, comprised of CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy Company, Reliant Energy, Stream Energy, TXU Energy Retail Company LP, WTU Retail Energy, the Alliance for Retail Marketers (comprised of APS Energy Services, Constellation New Energy, Inc., Direct Energy, Entergy Solutions Limited, Green Mountain Energy Company, Strategic Energy, and Stream Energy), and the Texas Energy Association for Marketers (comprised of Accent Energy, Cirro Energy, Entergy Solutions Ltd, Star Tex Power, Stream Energy, and Tara Energy), and Competitive Assets (on behalf of its REP clients, and specifically including: Spark Energy, Stream Energy, Alliance Power Company, LLC, Bridgepoint Power & Light,

LLC, Econnergy Energy Company, Freedom Power, Hino Electric, Tara Energy and TriEagle Energy). The commission received reply comments from the REP Coalition.

§25.454, Rate Reduction Program

The REP Coalition commented that they were uncertain of the meaning of the word "actual" in the proposed phrase "actual rate reductions" in new §25.454(i). The REP Coalition recommended that the word "actual" be deleted, and that clarifying language be added to the sentence to specify that the rate reductions described are those for "low-income customers that can be reimbursed from the system benefit fund..."

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The REP Coalition commented that §25.454(i), as proposed, uses the phrases "late fee" and "late penalty" interchangeably, and recommended use of the term "late penalty" for consistency with §25.480(c)(1).

ME SPP commented that they are not allowed to impose late fees or penalties on residential customers' bill, and therefore the provisions of new §25.454(i) would not apply to ME SPP.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The REP Coalition commented that §25.454(i)(1)(E), as proposed, contains a requirement that REPs notify customers twice a year on the subject of late penalty waivers. The REP Coalition inferred that the commission intended to parallel proposed §25.454(g)(3)(E), which requires that when the Low-Income Telephone and Electric Utility Program (LITE-UP) has sufficient funding, REPs will notify customers twice a year about the availability of the rate reduction program. The REP Coalition commented that the provision is appropriate in proposed §25.454(g)(3)(E) because customers that are not automatically enrolled are notified that they can self-enroll for the benefits. However, the REP Coalition stated that including a similar requirement in proposed §25.454(i)(1)(E) is inappropriate because self-enrollment is not available under the scenario contemplated by proposed §25.454(i)(1), and because eligible customers will automatically receive the waivers. The REP Coalition recommended that §25.454(i)(1)(E) be deleted.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The REP Coalition commented that §25.454(i)(3) provides explicit authorization for a REP to use the Low-Income Discount Administrator (LIDA) list for voluntary low-income programs. The REP Coalition commented that the provision would be clearer if it were moved to subsection (j), which provides guidance on other aspects of voluntary low-income programs. The REP Coalition proposed clarifying language indicating that other non-discriminatory criteria may be used to qualify customers, in order to make it clear that the LIDA list is not the only criterion that a REP may use. The REP Coalition also proposed a clarification in subsection (j).

The REP Coalition commented that proposed §25.454(i)(3) and (j) contain similar phrasing, with (i)(3) making reference to a "voluntary rate reduction program" and (j) describing a "voluntary

low-income program." The REP Coalition recommends that the term "voluntary low-income program" be used.

Commission response

The commission agrees with the REP Coalition and has made the recommended relocation of the language in §25.454(i)(3) to (j). The commission notes that this subsection (j) is now proposed as subsection (k). Further, the commission agrees with the clarifications proposed by the REP Coalition. The REP Coalition stated that the distinction between the requirements in subsections (i)(4)(A) and (i)(4)(B) is unclear. The REP Coalition recommended that (A) be stricken, and that the requirements of (B) and (4) be combined into one provision.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

§25.475, Information Disclosures to Residential and Small Commercial Customers

The REP Coalition strongly opposed the requirement in §25.475(d)(5)(E)(v), as proposed, that would require all residential customers to be offered the option to pay a security deposit in two installments. The REP Coalition therefore recommended that the commission retain the existing language for this subsection, without the amendments shown in the commission's proposal for publication.

Commission response

Consistent with the REP Coalition's comments, and the commission discussion of §25.478, the commission retains the existing language for this subsection. However, the commission replaces the word "customer" with the words "customer or applicant" for consistency with §25.478.

The REP Coalition recommended that the commission amend §25.475(g)(4)(L), which requires that the Your Rights as a Customer disclosure inform the customer of the "availability of discounts for qualified low-income customers." The REP Coalition commented that the commission should eliminate the requirement because requiring its inclusion can only serve to create confusion for customers who believe the discount is available when in fact it may not be.

Commission response

The commission notes that under §25.454(c)(2)(C) as proposed, the disclosure requirement in §25.475(g)(4)(L) and various other provisions would be suspended when funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers. This treatment of the provisions was proposed rather than amending a number of rules to address their possible suspension. This provision should provide adequate notice to REPs, because they should refer to the rate reduction rule when taking any required actions regarding electric rate reductions or discounts. Several other provisions in proposed §25.454(c)(2)(C) would also result in suspensions of other rules, and the REP Coalition did not propose that the suspension of those provisions be addressed in the other rules. Therefore, the commission declines to amend this provision.

§25.478, Credit Requirements and Deposits

The REP Coalition strongly opposed §25.478(e)(3), as proposed, which would extend to all residential customers and applicants the benefit previously reserved for rate reduction

customers that deposits over \$50 may be paid two installments. This provision would also add the requirement that customers be notified of this option when a REP requests a deposit. The REP Coalition stated three main arguments against the proposal that deposits be paid in installments: it will be detrimental to the competitive market; it is unfairly burdensome to REPs; and it conflicts with other rule provisions. Additionally, the REP Coalition requested that if the installment option for all residential customers is required, that the additional notice requirement be stricken.

The REP Coalition commented that the provision would be detrimental to the competitive market because: the REPs' current product offerings are structured around the opportunity to collect a security deposit from customers who present a credit risk in advance of providing several weeks of electric service on credit; it would represent a major change in the market structure, which could notably change the way that REPs serve residential customers and have serious unintended consequences for customers; the commission would alter the balance of a long-studied issue and vacate its 2004 ruling that such an option is inappropriate, unreasonable and burdensome; and most customer defaults occur within the first few months of service, the majority of which occur within the first month alone. The REP Coalition stated that currently, a REP collects approximately 80 days of deposit, which is approximately equal to the length of customer service if the customer does not pay its first bill. As proposed, half of the deposit would be due in 10 days and the other half on day 40 of receiving service. The first likely date of disconnection would be day 65, which would leave the REP with 25 days of service unpaid. The REP Coalition further added that unintended consequences may result, which may affect all customers a REP serves. REPs may restructure the residential segment of their business; reduce the amount of time that they provide service on credit; delay serving a customer for 40 days until the full security deposit has been paid; rely on a more stringent definition of what constitutes satisfactory credit; or cease customer accommodation practices such as built-in grace periods, customer-requested extensions or lower deposits.

The REP Coalition commented that the provision would be detrimental to the competitive market because the proposal is unfairly burdensome to REPs. They stated that it is not supportable to assume that late payment penalties are sufficient to off-set bad debt. When a customer does not pay, the REP is saddled with the bad debt and has incurred and continues to incur other costs associated with the debt owed, including overhead associated with collection efforts. The REP Coalition commented that late penalty payments and deposit requirements are distinct tools that assist REPs with different bad debt issues. Late penalties generally address slow pay situations in which the REP carries bad debt for a short period of time, while deposits generally address no-pay situations. The REP Coalition stated that REPs need all available tools to effectively manage bad debt and late fees, and the right to disconnect for non-payment and the ability to require an upfront deposit as a condition of service are distinct, integral and necessary components of a REP's collections and bad debt management efforts.

The REP Coalition commented that the proposal creates an internal conflict with the provisions of §25.478 that address timing, which cannot be reconciled with the proposed amendments. The REP Coalition cited §25.478(c)(3), relating to initial deposits for applicants and existing customers which states that a customer "may be required to pay this initial deposit within ten days af-

ter issuance of a written disconnection notice that requests such deposit," and §25.478(d), which has a similar provision regarding existing customers. Subsection (c)(1) was not cited by the REP Coalition, but states that if satisfactory credit is not demonstrated "a REP may require the applicant to pay a deposit prior to receiving service."

ME SPP did not oppose the proposal, but submitted that the expense involved in programming modifications and the revisions to existing publications may exceed the benefits of the proposed new requirement.

Consumers supported the proposal, and gave numerous reasons for that support. It would produce results and meet the intent of making sure all customers have some flexibility in meeting security deposit requirements. It would help customers who may not have sufficient funds to pay a deposit in full including: lower wage workers paid on a weekly basis; elderly customers on fixed incomes paid once a month; and many customers who are not low-income who still have problems paying a large deposit. Consumers stated that based on higher deposits now allowed by the customer protection rules (73 days average use) applicants for competitive service who cannot establish adequate credit and are required to pay the maximum amount allowed for a deposit can expect to pay a deposit ranging from \$309.60 to \$475.92 for 1000 kWh average monthly use, based on calculations from the December 2005 Monthly Bill Comparison. Consumers added that the provision would: give customers some leeway and measure of control to be able to budget; help customers who might otherwise have bill payment problems from the outset, having overextended themselves to pay a high deposit; and increase competition by allowing more customers options to shop for electric service.

In reply comments, the REP Coalition disagreed with Consumers that the changes in the deposit payment rule are appropriate. The REP Coalition recommended that this provision not be adopted because the commission's proposed amendments severely limit the ability of competitors to recover payment for services rendered, and would unnecessarily harm the competitive market.

Commission response

It is the commission's intent that the option for low-income customers to pay deposits over \$50 in two installments be available regardless of the availability of a list of customers eligible for the rate reduction program. The commission agrees with Consumers' comments that the option to pay deposits over \$50 in two installments is beneficial for customers, enhancing their ability to shop for electric service. However, the commission also recognizes that the proposed language that all residential customers have the option to pay deposits over \$50 in two installments may have negative ramifications for REPs and the market. Therefore, the commission retains the existing language for this subsection. The commission notes that in restoring the existing language of this subsection in this proposal, the commission replaces the word "customer" with the words "customer or applicant" in the second and third sentences for consistency with the first sentence.

To fulfill the commission's intent to give low-income customers the option to pay deposits over \$50 in two installments regardless of the availability of a list of customers eligible for the rate reduction program, the commission adds new subsection (j) to §25.454, and changes the proposed subsection (j) to subsection (k).

New subsection (j) will provide that if a list of eligible customers exists, REPs shall provide to low-income customers the option to pay deposits over \$50 in two installments. Because applicants for electricity will not appear on the list of a REP's customers eligible for the rate reduction program, this subsection will describe what documents a REP may request the customer or applicant to provide to prove eligibility for the rate reduction program during times when there is an eligibility list, but no discount, and when there is an eligibility list and a discount. These documents include: a letter from the customer's or applicant's current or prior REP stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available; a bill from the customer's current or prior REP that demonstrates that the customer is enrolled in the rate reduction program; or other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis. New subsection (j) will further require that upon customer request, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter can be combined with a letter issued to a customer regarding bill payment history. If no eligibility list exists, effective June 1, 2006, a REP will be required to extend the option to pay deposits over \$50 in two installments to any residential customers and applicants who qualify for the rate reduction program and a REP shall provide notice of this option in any written notice to a customer requesting a deposit. Under this provision, a REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and that the REP requests on a non-discriminatory basis. The commission believes that this language will help to ensure that the deposit installment option remains available to all low-income customers, while minimizing the administrative and economic burden on REPs.

The REP Coalition commented that should the proposal that all residential customers have the option to pay deposits over \$50 in two installments be adopted, the notice provision should not be adopted. The REP Coalition stated that the notice provision would be unprecedented with regard to customer security options; would exceed the previous requirement for low-income customers, which simply required it be included in any written notice; and would be unnecessary because customers who are interested will inquire about it without prompting, or will make note of it in the written notice.

Commission response

The commission amends this provision consistent with the comments of the REP Coalition.

In adopting §25.478 the commission also modifies subsection (j) to delete an outdated reference indicating that REPs should comply with the provision no later than August 31, 2004. This subsection was not opened in the proposal, but the REP Coalition requested this amendment in Project Number 31538, *Review of Agency Rules Pursuant to the Administrative Procedure Act §2001.039 for FY 2000-2003*. The change is non-substantive, and the commission finds that it is appropriate to modify this subsection within this rulemaking.

General Comments

The REP Coalition commented that the absence of funding in the current biennium for the LITE-UP Texas discount, as it relates to compliance with the commission's rules, is a significant issue that needs to be addressed promptly by the commission and market participants. The REP Coalition stated that both REPs

and low-income customers will benefit from the certainty provided by revisions to the commission's low-income rules to address the availability of funds for the program. The REP Coalition urged the commission to focus on refining its current proposal to amend §25.454, and associated provisions in §25.475. The REP Coalition stated that it would support adoption of amendments to these rules, as modified by the REP Coalition in its comments. However, the REP Coalition commented that it was "troubled" by the gradual expansion of the rulemaking to include a re-examination of security deposits for all residential customers, which has been thoroughly analyzed by the commission in two prior rulemakings.

Consumers commented that because of the dramatic effect of fuel price increases on the Price to Beat (PTB), low-income customers, most of whom are PTB customers, have shouldered more than their share of the cost increases without the benefit of those programs promised by the Legislature to help make rates more affordable. Consumers commented that most PTB customers have seen their bills increase by at least 80% over the past three years with a 50% increase the last three to six months. The Consumers stated that it was incomprehensible that the low-income customers may now lose the last few protections that exist to mitigate the effects of these unprecedented rate increases.

Consumers stated that they were hopeful that the proposed rule amendments would provide for a mechanism to require the identification of low-income customers in the absence of funding for the low-income rate discount from the system benefit fund. Consumers proposed a number of options as to how the automatic enrollment process might be maintained to continue identifying eligible customers. These options included: working with the Legislative Budget Board to change the commission's budget to cover the costs; requiring REPs to subscribe to the LIDA to identify eligible customers; requiring the Electric Reliability Council of Texas (ERCOT) to perform the automatic enrollment function; requiring Transmission Distribution Utilities (TDUs) to subscribe to the LIDA and provide the information to REPs; and providing REPs with the list of customers eligible for Lifeline telephone service for which they would be required to develop a process to match the results with their customer records. Consumers noted that the last proposal would add some customers who were not previously eligible for the rate discount, given that the income eligibility for Lifeline service is 150% of the federal poverty level as opposed to 125% for the rate discount, but stated that the savings in LIDA costs involved with utilizing the Lifeline eligibility list should more than offset any losses attributable to that population for late fees. Consumers stated that if the commission cannot accept these options or some other option that would preserve the current prohibition on charging late fees to low-income customer, all late fees should be prohibited.

In reply comments, the REP Coalition responded that Consumers have taken a different approach with their comments by offering a list of recommendations unrelated to the language of the published rule that are well outside the scope of this rulemaking, and responded to select concepts. The REP Coalition disagreed with the suggestion that REPs or TDSPs subscribe to LIDA to receive a list of eligible customers and commented that it was not backed with any explanation of why it would be beneficial, or under what statutory or other legal authority the commission could require such payment. The REP Coalition commented that this would reduce the total amount of REPs' budgets for providing low-income assistance, and implies that REP assistance funds are better directed to

administrative expenses than to individual customers. The REP Coalition disagreed with the suggestion that ERCOT perform automatic enrollment, and stated that any market or consumer benefit was unclear. The REP Coalition commented that this would require ERCOT to take on the job of LIDA without a budget, personnel or related experience. Though ERCOT has the technical capability and expertise to do this, there is no justification for requiring ERCOT to create a function that is handled aptly by the current LIDA. The REP Coalition commented that such a requirement would inappropriately redirect ERCOT funds away from planned market enhancements or cause an increase in ERCOT's administrative fee. The REP Coalition commented that under the proposal to use the eligibility list for Lifeline telephone service, even the consumers noted that an electric customer list resulting from this method would not comply with PURA §39.903. Additionally, the result would be that only households who have established telephone and electric service under identical names would be on the eligibility list, eliminating households where services are enrolled by different family members and even those where the customer uses different variations of their name with different providers.

In reply comments the REP Coalition stated that their members would continue to urge the Legislature to restore funding and resume the prior benefits to low income customers, and stated its belief that the funding will ultimately be restored by the Legislature. Therefore, the commission should avoid any changes in this proceeding that would dismantle the eligibility determination process used prior to September 1, 2005, which worked well and should be reinstated when funding is restored.

Consumers commented that the proposed rule fails to resolve the issue of REPs being in violation of the customer protection rules for charging late fees to low-income customers. In reply comments, the REP Coalition took exception to the Consumers' assertions that REPs are currently in violation of the commission's rules by charging late fees to low-income customers. Any requirement to not charge late fees under the existing rules ended with the last LITE-UP discount because the rule only applies to customers receiving the discount. The REP Coalition added that REPs have continued to waive late fees for the customers whom the REP believes would receive the discount if it were available.

Consumers stated that the proposed provisions on identifying low-income consumers for the purpose of establishing eligibility for the late fee exemption or qualification for REP sponsored rate discounts could be labeled "The Do-Nothing Rule" and only better define the commission's authority to do something, but mean nothing without a firm plan for implementing the solution. Consumers commented that the draft rule proposes no solution or alternate proposal.

Consumers commented that if the commission and industry are unable to resolve the customer enrollment problem, then steps should be taken to alter the late fee provisions to assure that low-income customers are not harmed. Consumers commented that a safety net provision for late fees is still necessary and suggested that late fees be prohibited for all customers. Consumers stated that they are not convinced that late fee payments are essential to a REP's operations, that in previous rulemakings regarding the customer protection rules, the REPs as a whole argued that late fees in and of themselves are often ineffective in getting customers to pay on time. The REP Coalition responded that they have not been able to confirm whether the Consumers' statement is a correct quote because no citation was provided.

However, it was either taken out of context or it is an isolated statement that does not represent the current opinion of any of the REP Coalition signatories. The REP Coalition added that late fees are effective in encouraging customers to pay bills on time, and it is an important tool REPs have available to reduce bad debt, and that this is why late fees are common in most industries as well as for municipal electric and water systems. The REP Coalition provided examples of late fees including, but not limited, to Austin Energy which imposes a 5% late payment fee for electric service, and Fannin Electric Cooperative, which charges \$10 on all past due accounts.

Consumers commented that since late fees are assessed automatically and without any apparent connection to a cost center such as collection activities, Consumers are concerned that the payments are simply used to generate additional profits.

Consumers commented that all revenue received by REPs comes from only one source--its customers--and they have a right to know how the money they pay is being spent. They added that up to January 1, 2002, the industry successfully managed its bad debt without late fees. Consumers recommended that the commission consider amending the late fee provisions so that customers are only charged on amounts more than 30 days past due, or if the late fee provisions remain the same, they recommended that the commission require REPs to contribute a percentage of the late fees they collect on a monthly basis to support a fund to pay the costs of automatic enrollment in lieu of system benefit funds. The REP Coalition replied that these comments are unrelated to the rule that the commission has published for comment, and that this suggestion "completely guts" the function of late fees as an interim, less intrusive incentive prior to disconnection for non-payment. It would also "further erode" the ability of late penalties to offset the carrying costs to REPs for nonpayment. The REP Coalition stated that without the ability for REPs to apply this cost-recovery mechanism to late-payments, all customers would be subject to increased prices. Additionally, to apply a late penalty on a date other than the past due date, some REPs may be required to perform significant, expensive systems changes.

Commission response

The Consumers' comments are beyond the scope of this rule. The late payment penalty is set out in §25.480 of this title, relating to Bill Payments and Adjustments, and no amendment to this rule was proposed in this rulemaking proceeding. The comments of the REP Coalition and Consumers relating to late payment penalties did not address the proposed amendments, and, therefore the commission makes no changes to the proposed rules based on those comments. How the commission might fund an eligibility list to identify low-income customers and modifications to the late penalty provisions is also outside the scope of this rulemaking.

In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER Q. SYSTEM BENEFIT FUND

16 TAC §25.454

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2005): (1) §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) which provides that the commission has the authority to adopt rules nec-

essary or appropriate rules for minimum service standards, relating to customer deposits; and (3) §39.903 which grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

§25.454. Rate Reduction Program.

(a) Purpose. The purpose of this section is to define the low-income electric rate reduction program, establish the rate reduction calculation, and specify enrollment options and processes.

(b) Application. This section applies to retail electric providers (REPs), as defined in Public Utility Regulatory Act §39.106, that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).

(c) Funding. The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:

(1) The requirements of subsections (e), (f) and (g) of this section are suspended until sufficient funding and spending authority are available.

(2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended until sufficient funding and spending authority are available:

(A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);

(B) §25.457(h) - (i) of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);

(C) §25.475(g)(4)(L) of this title (relating to Information Disclosures to Residential and Small Commercial Customers); and

(D) §25.43(d)(3)(D), (q)(1)(A) - (B), (q)(2)(A), and (q)(3)(A) of this title (relating to Provider of Last Resort).

(3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended until an eligibility list is available as provided in subsection (i) of this section.

(d) Definitions. The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Discount factor--The amount of discount an eligible low-income customer must be provided by any REP, or MOU or Coop, when applicable, in the customer's area, expressed as cents per kilowatt-hour (kWh).

(2) Discount percentage--The percentage of discount established by the commission and applied to the lower of the price to

beat (PTB) or provider of last resort (POLR) rate in a particular service territory.

(3) Low-Income Discount Administrator (LIDA)--A third-party vendor with whom the commission has a contract to administer the rate reduction program.

(4) Rate reduction--The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount factor and total consumption in accordance with subsection (e)(3) of this section.

(5) REP--For the purposes of this section, a retail electric provider and an MOU or Coop that provides retail electric service in an area that has been opened to customer choice.

(e) Rate reduction program. All eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.

(1) The commission shall periodically establish a discount percentage. The discount percentage may be set at a level no greater than 20%.

(2) The commission staff shall calculate and post on the commission website (www.puc.state.tx.us) the discount factor for an eligible low-income customer in accordance with this subsection.

(A) The discount factor shall be separately calculated for each transmission and distribution utility service area and shall be recalculated when the PTB or POLR rate changes or the commission revises the discount percentage.

(B) The discount factor shall be calculated by applying the discount percentage to the lower of the POLR rate or the standard residential PTB rate. The discount amount shall reflect any seasonal variation in the lower of the PTB or the POLR rate.

(C) If the discount factor changes for any area because of a change to the discount percentage or a change to the PTB or POLR rate for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website.

(3) All REPs shall provide the rate reduction to eligible low-income customers.

(A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill.

(B) The rate reduction shall be calculated by multiplying the customer's total consumption (kWh) for the billing period by the discount factor (in cents/kWh) in effect during the billing cycle in which the bill is rendered. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied.

(C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount."

(D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for rate reductions they provide to eligible low-income customers.

(f) Customer enrollment. Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

(1) Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from the Texas Health and Human Services Commission (HHSC) with customer-specific data from REPs.

(A) HHSC shall provide client information to LIDA in accordance with subsection (g)(1) of this section.

(B) REPs shall provide customer information to LIDA in accordance with subsection (g)(3) of this section.

(C) LIDA shall compare the customer information from HHSC and REPs, create files of matching customers, enroll these customers in the rate reduction program, and notify the REPs of their eligible customers.

(2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) Distributing and processing self-enrollment applications, as developed by the commission, for the purposes of initial self-enrollment, and for re-enrollment of self-enrolled and automatically enrolled customers;

(B) Maintaining customer records for all applicants;

(C) Providing information to customers regarding the process of enrolling in the low-income discount program; and

(D) Determining customers' eligibility by matching customer information submitted through self-enrollment forms with customer data provided by REPs and reviewing proof of income documentation submitted by customers.

(3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy.

(4) The following procedures govern a customer's re-enrollment.

(A) A self-enrolled customer may re-enroll by submitting a completed self-enrollment form.

(B) A customer who was formerly, but is no longer, automatically enrolled may re-enroll through self-enrollment.

(C) LIDA shall send a customer who is eligible to re-enroll a self-enrollment form which specifies a date for submitting the completed form that is not more than 30 days after the date the form is mailed. If the customer submits a completed form before the date specified on the form and LIDA determines that the customer is eligible for re-enrollment, the customer shall receive the rate reduction without interruption.

(D) If a customer does not return a properly completed form before the time specified by LIDA, the customer's rate reduction may be interrupted until LIDA determines that the customer is eligible.

(5) The eligibility period of each customer will be determined by the customer's method of enrollment.

(A) The eligibility period for self-enrolled customers is seven months from the date of enrollment.

(B) Automatically enrolled customers will continue to be eligible as long as the customers receive HHSC benefits. Once a

customer no longer receives HHSC benefits, the customer will continue to receive the rate reduction benefit for a period of no more than 60 days, during which the customer may self-enroll.

(6) A customer who believes that a self-enrollment application has been erroneously denied may request that LIDA review the application, and the customer may submit additional proof of eligibility.

(A) A customer who is dissatisfied with LIDA's action following a request for review under this paragraph may request an informal hearing to determine eligibility by the commission staff.

(B) A customer who is dissatisfied with the determination after an informal hearing under subparagraph (A) of this paragraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(g) Responsibilities. In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) HHSC shall:

(A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving HHSC benefits as detailed in the memorandum of understanding between HHSC and the commission; and

(B) assist in the distribution of promotional and informational material as detailed in the memorandum of understanding.

(2) LIDA shall:

(A) receive customer lists from REPs on a monthly basis through data transfer;

(B) retrieve the database of clients from HHSC on a monthly basis;

(C) conduct the self-enrollment, automatic enrollment, and re-enrollment processes;

(D) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;

(E) make available to each REP, on a date prescribed by the commission on a monthly basis, a list of low-income customers eligible to receive the rate reduction;

(F) notify customers that have applied for the rate reduction through the self-enrollment process of their eligibility determination and notify automatically enrolled and self-enrolled customers of their expiration of eligibility, and opportunities for re-enrollment in the rate reduction program;

(G) answer customer inquiries regarding the rate reduction program, and provide information to customers regarding enrollment for the rate reduction program and eligibility requirements;

(H) resolve customer enrollment problems, including issues concerning customer eligibility, the failure to provide discounts to customers who believe they are eligible, and the provision of discounts to customers who do not meet eligibility criteria; and

(I) protect the confidentiality of the customer information provided by the REPs and the client information provided by HHSC.

(3) A REP shall:

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who are eligible to receive the rate reduction;

(C) upon commission request, monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3000 kWh in a month shall be considered a high-usage customer;

(D) apply a rate reduction to the electric bills of the eligible customers identified by LIDA within the first billing cycle in which it is notified of a customer's eligibility, if notification is received no later than seven days before the end of the billing cycle, or, if not, apply the rate reduction within 30 calendar days after notification is received from LIDA;

(E) notify customers twice a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;

(F) assist LIDA in working to resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general LITE-UP processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(G) provide to the commission copies of materials regarding the rate reduction program given to customers during the previous 12 months upon commission request.

(h) Confidentiality of information. All data transfers shall be conducted under the terms and conditions of confidentiality agreements to protect customer privacy and competitively sensitive information.

(1) The data acquired from HHSC is subject to a HHSC confidentiality agreement and shall only be used for the purposes of enrolling customers in the rate reduction program, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.

(2) All data transfers from REPs to LIDA shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information. The data acquired from REPs shall be used only for the purposes of enrolling customers into LITE-UP, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.

(3) LIDA shall treat information relating to customer eligibility for the rate reduction as proprietary and confidential data and may not use it for any other purpose.

(i) Eligibility List for Continuation of Late Penalty Waiver Benefits.

(1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income cus-

tomers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsection (f)(1) of this section if funds were available. The procedures set forth in subsection (f)(1) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, ESI ID, service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who would be eligible for automatic enrollment in the rate reduction program if funds were available;

(C) monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3,000 kWh in a month shall be considered a high-usage customer;

(D) assist LIDA in working to resolve issues concerning customer eligibility; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(E) provide other information and assistance, upon request of the commission, to assist in implementation of this section.

(2) If funding is available to include self-enrollees in the list of eligible customers, the commission may, in its discretion, set forth processes for determining eligibility in a procedural guide. The processes, to the extent feasible, will be consistent with subsections (f) and (g) of this section.

(3) If pursuant to subsection (i) of this section, the commission, through the LIDA or other means, provides the REPs with a list of eligible customers §25.480(c)(1) of this title, which requires that a customer receiving a low-income discount pursuant to the Public Utility Regulatory Act §39.903(h) may not be assessed a late penalty, shall be continued based on the customer's eligibility for the discount, rather than the customer's receipt of the discount.

(j) Deposit Installment Benefits.

(1) If LIDA is maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, then a customer or applicant who qualifies for the rate reduction program is eligible to pay deposits over \$50 in two installments, pursuant to §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(A) A REP who requires a customer or applicant to provide sufficient information to the REP to demonstrate that the customer or applicant qualifies for the rate reduction program may request the following information:

(i) a letter from the customer's or applicant's current or prior REP stating that the applicant is on the list of customers who would be eligible for the rate reduction if funds were available;

(ii) a bill from the current or prior REP that demonstrates that the customer or applicant is enrolled in the rate reduction program; or

(iii) other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis.

(B) Upon the request of a customer, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter may be combined with a letter issued to a customer regarding bill payment history.

(2) Effective June 1, 2006, if LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over \$50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate and that the REP requests on a non-discriminatory basis. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) Voluntary Programs. Nothing in this section is intended to impair a REP's ability to voluntarily provide a low-income discount or other benefits to low-income customers.

(1) The list of low-income customers who would be eligible for the rate reduction if funds were available, or other non-discriminatory criteria, may be utilized by a REP as evidence of a customer's eligibility for the REP's voluntary low-income program, if offered.

(2) In the event a REP chooses to voluntarily offer a discount or other benefits to low-income customers, the REP shall treat any information obtained regarding the customer's financial status or enrollment in a government program as confidential information and shall not disclose the information to any other party or use the information for any purpose other than enrollment in a voluntary low-income program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601396

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 23, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 936-7223

◆ ◆ ◆

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.475, §25.478

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Sup-

plement 2005): (1) §14.002 which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) which provides that the commission has the authority to adopt rules necessary or appropriate rules for minimum service standards, relating to customer deposits; and (3) §39.903 which grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

§25.475. *Information Disclosures to Residential and Small Commercial Customers.*

(a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, providing service to residential and small commercial customers.

(b) **General disclosure requirements.** All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by REPs and aggregators:

(1) shall be provided in a readable format, written in clear, plain, easily understood language;

(2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and

(3) upon receipt of a license or certificate from the commission, shall include the REP's certified name or the aggregator's registered name, and the number of the license or registration.

(c) **Advertising and marketing materials.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product to a customer, then the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials.

(1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price or environmental quality for an electricity product of the REP with respect to a product offered by another REP shall include the Electricity Facts Label. In lieu of including an Electricity Facts Label, the following statement shall be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number, and website (if available) of the REP)." A REP shall provide an Electricity Facts Label (and terms of service document if requested by the customer), relating to a service or product being advertised to each person who requests it.

(2) **Television and radio advertisements.** A REP shall include the following statement in any television or radio advertisement that makes a specific claim about price or environmental quality for an electricity product of the REP with respect to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. A REP shall provide an Electricity Facts Label (and terms of service if requested by the customer), to each person who requests it.

(3) **Internet advertisements.** Advertisements on the internet shall comply with the provisions of paragraph (2) of this subsection.

Each REP shall prominently display the Electricity Facts Label for any products offered by the REP for enrollment on the website without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The Electricity Facts Label shall be printable in a one-page format.

(4) **Outdoor advertisements.** Advertisements on outdoor signs such as billboards shall comply with the provisions of paragraph (2) of this subsection. If the REP's phone number is included on the advertisement, the phone number shall not be required in the disclaimer statement.

(d) **Terms of service document.**

(1) For each electric service or electric product that it offers to residential or small commercial customers, a REP shall create a terms of service document. Each terms of service document shall be subject to review by the commission and shall be furnished to the commission or its staff upon request.

(2) For services and products that a REP makes widely available to residential and small commercial customers, a REP shall assign an identification number to each version of its terms of service document, and shall publish the number on the terms of service document.

(3) The terms of service document shall be provided to new customers and, if the service or product is being made widely available to residential and small commercial customers, to any eligible customer that requests the terms of service. An updated terms of service document shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, a customer may receive an additional copy of the terms of service document under which it is receiving service.

(4) A REP shall retain a copy of each version of the terms of service during the time that the plan is offered and for two years after that version of the terms of service is no longer offered and no customer is being served under that version of the terms of service.

(5) The following information shall be conspicuously contained in the terms of service document:

(A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);

(B) The Electricity Facts Label as specified in subsection (f) of this section, unless the Electricity Facts Label is provided as a separate document at the same time as the terms of service document is provided;

(C) A statement as to whether there is a minimum term of service, any automatic renewal provisions, how service can be cancelled, and any fees associated with cancellation of service;

(D) A statement as to whether there are penalties to terminate service before the end of the minimum term of service, and the amount of those penalties, and whether there are any conditions under which those penalties will not apply;

(E) If the REP requires deposits from its customers:

(i) a description of the conditions that will trigger a request for a deposit;

(ii) the maximum amount of the deposit or the manner in which the deposit amount will be determined;

(iii) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;

(iv) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478(a) of this title (relating to Credit Requirements and Deposits);

(v) the right of a customer or applicant who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to §25.478(e)(3) of this title; and

(vi) for an affiliate REP or Provider of Last Resort (POLR), the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(F) The description of any charges resulting from a move-in or switch that may be passed through by the transmission and distribution utility (TDU) and paid by the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;

(G) The itemization of any services that are included in the customer's terms of service, including:

(i) the specific methods and prices by which the customer will be charged for electric service and

(ii) the price for each service or product other than electric service. If a REP has bundled the charges for these other services together, the total price for services other than electric service;

(H) The itemization of any quantifiable charges and fees that may be imposed on the customer by the REP, such as an application fee, charges and fees for default, late payment, returned checks, cancellation of service, and termination of service;

(I) A description of payment arrangements and bill payment assistance programs offered by the REP;

(J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of services offered by the REP;

(K) In a conspicuous and separate paragraph or box:

(i) A description of the right of a new customer to rescind service without fee or penalty of any kind within three federal business days after receiving the terms of service document pursuant to §25.474(j) of this title (relating to Selection of Retail Electric Provider); and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile machine number or email address that the customer may use to rescind service.

(L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy efficiency services; and

(M) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the terms of service document.

(e) Notice of changes in terms and conditions of service.

(1) A REP shall provide written notice to its customers at least 45 days in advance of any material change in the terms of service document. The notice shall identify the material change and clearly specify what actions the customer needs to take to terminate the terms of service agreement without a penalty, the deadline by which such

action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your terms of service." The notice shall clearly state that the customer may decline any material change in the terms of service and terminate the terms of service agreement without a penalty. Notice of the change is not required for material changes that benefit the customer or for changes that are mandated by a regulatory agency. Notice is not required for changes in rates if the terms of service clearly specify the manner in which rates may be adjusted (i.e., variable rate products).

(2) A REP may utilize an automatic renewal clause. Any service renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 31 days and such clause may be repeatedly activated unless cancelled by the customer or unless the REP materially changes the terms of service.

(f) Electricity Facts Label.

(1) Pricing disclosures. Pricing information disclosed by a REP in an Electricity Facts Label shall include:

(A) For the total cost of electric services, exclusive of applicable taxes:

(i) If the billing is based on prices that will not vary by season or time of day, the total average price for electric service reflecting all recurring charges, including generation, transmission and distribution, and other flat rate charges expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for the following usage levels:

(I) For residential customers, 500, 1,000, and 1,500 kilowatt hours per month; and

(II) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month;

(ii) If the billing is based on prices that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

(I) For residential customers, 500, 1,000, and 1,500 kilowatt hours per month; and

(II) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month;

(iii) If a REP combines the charges for electric service with charges for any other product, the REP shall:

(I) If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and

(II) If the REP does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.

(B) If the pricing plan includes prices that will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns - your actual price for electric service may be different depending on how and when you use electricity."

(C) If the pricing plan envisions prices that will vary during the term of the service because of factors other than season and time of day, the statement: "This price disclosure is an example based

on average service prices - your average price for electric service will vary according to your usage and (insert description of the basis for and the frequency of price changes during the service period)."

(D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed;

(E) If the price of electric service will vary, the phrase "variable price" and a description of how the prices will change and when; and

(F) The criteria used to calculate the average pricing disclosures for residential customers.

(2) Service terms disclosures. Specific service terms that shall be disclosed on the Electricity Facts Label are:

(A) The minimum service term, if any; and

(B) Early termination penalties, if any.

(3) Fuel mix disclosures. The Electricity Facts Label shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The breakdown for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year.

(A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%".

(B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%".

(4) Emissions and waste disclosures. The Electricity Facts Label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.

(A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.

(B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.

(C) The registration agent shall calculate the statewide system average rates to be used in accordance with this subsection.

(5) Renewable energy claims. A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(6) Format of Electricity Facts Label. Each Electricity Facts Label shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraph: Figure: 16 TAC §25.475(f)(6) (No change.)

(7) Distribution of Electricity Facts Label. A REP shall distribute its Electricity Facts Label to its customers no less than once in a 12-month period and to the commission upon request. A REP is not required to distribute its Electricity Facts Label to a customer pursuant to this paragraph if it has provided a new Electricity Facts Label to that customer in the past six months.

(g) Your Rights as a Customer disclosure. In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.

(1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.

(2) The REP shall distribute an update of this disclosure no less than once in a 12-month period to its customers.

(3) Each REP's Your Rights as a Customer disclosure is subject to review and approval by the commission, upon request.

(4) The disclosure shall inform the customer of the following:

(A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);

(B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer via the standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable;

(C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;

(E) Special actions or programs available to those residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;

(F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(G) Cancellation of terms of service with or without penalty;

(H) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);

(I) Protections relating to termination of service protections pursuant to §25.482 of this title (relating to Termination of Service) and disconnection of service pursuant to §25.483 of this title (relating to Disconnection of Service);

(J) Availability of financial and energy assistance programs for residential customers;

(K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and §26.37 (relating to Texas No-Call List);

(L) Availability of discounts for qualified low-income residential customers;

(M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);

(N) Procedures for reporting outages;

(O) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information);

(P) Availability of POLR service and how to contact the POLR; and

(Q) The steps necessary to have service restored or reconnected after involuntary suspension or disconnection.

(h) This section is effective June 1, 2004.

§25.478. Credit Requirements and Deposits.

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph. A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

(i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;

(ii) is not delinquent in payment of any such electric service account; and

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once.

(B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.

(C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.

(D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by

a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.

(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

(i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

(ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*

(4) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) Credit requirements for non-residential customers. A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.

(c) Initial deposits for applicants and existing customers.

(1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.

(2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.

(3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or dis-

connected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

(d) Additional deposits by existing customers.

(1) A REP may request an additional deposit from an existing customer if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.

(3) A REP may terminate or disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) Amount of deposit.

(1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant

(A) shall not exceed an amount equivalent to the greater of

(i) one-fifth of the customer's estimated annual billing or;

(ii) the sum of the estimated billings for the next two months.

(B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.

(2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant

(3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments. Notice of this option for customers or applicants eligible for the rate reduction program shall be included in any written notice to a customer or applicant requesting a deposit. The customer or applicant shall have the obligation of providing sufficient information to the REP to demonstrate that the customer or applicant is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

(f) Interest on deposits. A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(g) Notification to customers. When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) Records of deposits.

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A REP shall maintain a record of each unclaimed deposit for at least four years.

(4) A REP shall make a reasonable effort to return unclaimed deposits.

(i) Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.

(5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Service) or §25.483 of this title.

(j) Refunding deposits and voiding letters of guarantee.

(1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable.

(2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.

(3) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(k) Re-establishment of credit. A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP

or execute a deferred payment agreement, if offered, and reestablish credit.

(l) Upon sale or transfer of company. Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

(m) This section is effective June 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601397

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 23, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 936-7223

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.13

The Texas Board of Professional Engineers adopts an amendment to §137.13, relating to Inactive Status, without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8783) and will not be republished

The adopted amendment allows a license holder currently in Inactive Status to use the term "Retired" to indicate Inactive Status on business cards and correspondence.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601175

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: March 20, 2006
Proposal publication date: December 30, 2005
For further information, please call: (512) 440-7723

◆ ◆ ◆
CHAPTER 139. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT
PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers adopts amendments to §139.35, relating to Sanctions and Penalties without changes to the proposed text as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 221) and will not be republished.

The adopted amendments reorganize the Sanction and Penalty table to include an Administrative classification, and relocate certain current violations to this new classification. The Board has also reviewed and revised the suggested sanctions for the Administrative violations.

No comments were received regarding the Board's adoption of the amended section.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601174
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: March 20, 2006
Proposal publication date: January 13, 2006
For further information, please call: (512) 440-7723

◆ ◆ ◆
PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD

CHAPTER 153. RULES RELATING TO
PROVISIONS OF THE TEXAS APPRAISER
LICENSING AND CERTIFICATION ACT

22 TAC §153.21

The Texas Appraiser Licensing and Certification Board adopts an amendment to §153.21, concerning Appraiser Trainees and Sponsors with changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6170) and will be republished.

The adopted amendment to §153.21(a) defines the educational requirements that an appraiser trainee applicant must satisfy for an application received after March 31, 2006, that is consistent with the Appraiser Qualifications Board Criteria. The proposed rule has an effective date of for applications "received after February 28, 2006;" however, the rule was adopted changing the effective date to "applications received after March 31, 2006."

While a written comment was received from the Foundation Appraiser Coalition of Texas (FACT) opposing proposed amendment to §153.21, it did not include the amendment to subsection (a).

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

§153.21. Appraiser Trainees and Sponsors.

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state certified appraisers may apply to the board on the application form prescribed by the board on the application form prescribed by the board. For all applications received after March 31, 2006, a prospective appraiser trainee must meet the requirements set forth in §1103.353 of the Texas Appraiser Licensing and Certification Act, complete 75 creditable classroom hours as set forth in the Trainee Core Curriculum of the Appraiser Qualifications Board, and must pass the 15 hours National USPAP course and examination. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a sponsoring certified appraiser unless one of the following events occurs:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or the educational or experience requirements for renewal have not been met;

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(b) The sponsoring certified appraiser shall immediately notify the board in writing of any termination of sponsorship of an appraiser trainee, on a form prescribed by the board and pay a fee set by the board not later than the 10th day after the date of such termination. The board will notify the trainee that the sponsorship has been terminated.

(c) If an appraiser trainee's approval has expired or been revoked by the board or the trainee is no longer under the sponsorship of a certified appraiser, the appraiser trainee may not perform the duties of an appraiser trainee until an application to sponsor the trainee has been filed together with the appropriate fee and approved by the board.

(d) Certified appraisers who sponsor appraiser trainees or who sign a report shall be responsible to the public and to the board for the conduct of the appraiser trainee under the Act. After notice and hearing, the board may reprimand a sponsoring appraiser or may suspend or revoke a sponsoring appraiser's certification based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the board.

(e) A certified appraiser may be added as a sponsor during the term of an appraiser trainee's authorization, by completing a form prescribed by the board and paying a fee set by the board, and shall assume all the duties, responsibilities, and obligations of an appraiser trainee sponsor as specified in these rules.

(f) Both the sponsoring certified appraiser and the appraiser trainee must reside in this state.

(g) An approved appraiser trainee must use the business address of his or her sponsor.

(h) An approved appraiser trainee who signs an appraisal report must include his or her TALCB approval or authorization number and the word "Trainee."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2006.

TRD-200601156

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: March 20, 2006

Proposal publication date: September 30, 2005

For further information, please call: (512) 465-3950



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.2, §277.6

The Texas Optometry Board adopts amendments to Rules 277.2 and 277.6 without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7974).

The amendments implement requirements of House Bill 1025, 79th Legislature, Regular Session.

Rule 277.2 amendments change the disciplinary proceedings procedure. The amendments require the attendance of additional board members at informal conferences, provide for informal conferences for persons issued cease and desist orders, require consulting a penalty schedule, and allow the Investigation-Enforcement Committee to enter into an agreed order with a licensee in which the licensee agrees to refund the examination fee paid by the patient.

Rule 277.6 amendments concern the publishing of recommended administrative penalties and fines. The amendments add additional guidelines to those currently in this section, and provide a recommended amount versus a range of administrative penalties and fines.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.551, 351.552 and House Bill 1025, 79th Legislature (Sections §§351.507, 351.522 and 351.608 of the Optometry Act). No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.551 and §351.552 as authorizing the imposition of administrative penalties by the Board according to provisions set out in the Act, and House Bill 1025, 79th Legislature, as revising the required participants of an informal conference, allowing refunds of examination fees, requiring a penalty schedule, setting the procedure for issuing cease and desist orders and requiring the Board to publish a standardized penalty schedule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601393

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: March 23, 2006

Proposal publication date: December 2, 2005

For further information, please call: (512) 305-8502



PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, concerning Internship Training Schedule, without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8785) and will not be republished.

Section 391.3(4)(C) was amended to make a grammatical change. The word "polygraphy" was corrected to read as "polygraph". The amendment to §391.3(15) deletes the sentence "Board Members or Polygraph Board Staff may not act as sponsors".

During the course of the August 10, 2005 meeting, the members of the board discussed the shortage of willing sponsors for polygraph interns and the fact that there are currently intern applicants who have been unable to find a sponsor. They also discussed the particular hardship upon intern applicants outside of major metropolitan areas. Prior to this rule, such interns had been sponsored by board members. There are currently polygraph intern applicants who are unable to complete their training and proceed toward licensure due to a lack of willing sponsors, and the current rule is prohibiting otherwise willing and qualified sponsors from sponsoring interns.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601306

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: March 21, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 424-2058



PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts the repeal of §§741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41, 741.61 - 741.66, 741.81 - 741.86, 741.91, 741.101 - 741.103, 741.111, 741.112, 741.121, 741.141, 741.142, 741.161 - 741.165, 741.181, 741.182, 741.191 - 741.195 and new §§741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41 - 741.45, 741.61 - 741.65, 741.81 - 741.85, 741.91, 741.101 - 741.103, 741.111, 741.112, 741.121, 741.141, 741.161 - 741.165, 741.181, 741.182, 741.191 - 741.201, concerning the licensure and regulation of speech-language pathologists and audiologists. The new §§741.1, 741.12, 741.41, 741.42, 741.44, 741.62, 741.64, 741.82, 741.84, 741.102, 741.103, 741.141, 741.161, 741.164, and 741.181 are adopted with changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5247). The repeal of §§741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41, 741.61 - 741.66, 741.81 - 741.86, 741.91, 741.101 - 741.103, 741.111, 741.112, 741.121, 741.141, 741.142, 741.161 - 741.165, 741.181, 741.182, 741.191 - 741.195 and new §§741.11, 741.13 - 741.15, 741.31 - 741.33, 741.43, 741.45, 741.61, 741.63, 741.65, 741.81, 741.83, 741.85, 741.91, 741.101, 741.111, 741.112, 741.121, 741.162, 741.163, 741.165, 741.182, and 741.191 - 741.201 are adopted without changes, and the sections will not be published.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41, 741.61 - 741.66, 741.81 - 741.86, 741.91, 741.101 - 741.103, 741.111, 741.112, 741.121, 741.141, 741.142, 741.161 - 741.165, 741.181, 741.182, and 741.191 -

741.195 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensure and regulation of speech-language pathologists and audiologists are still needed; however, the rules are repealed and adopted as new rules as described in this preamble. The adopted repeals and new sections are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed, repealed, and readopted in order to ensure appropriate subchapter, section, and paragraph organization and captioning; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy of legal citations; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable to the extent possible. The review resulted in significant modifications and improvements to the organization and structure of the rules, as described in the proposed preamble.

The following comments were received concerning the proposed repeal and new sections. Following each comment is the board's response and any resulting change(s).

Comment: Several commenters requested that the comment period be extended due to the effects of Hurricane Rita on the communities of Southeast Texas, which affected the commenters' ability to analyze the proposal and provide comments.

Response: The board agrees and the comment period, which was scheduled to close on October 2, 2005, was extended to November 2, 2005.

Comment: Several commenters expressed support and appreciation for the streamlining of the rules and the board's efforts to eliminate minutiae and redundancy.

Response: The board agrees and appreciates the comments and thanks the commenters. No change was made as a result of the comments.

Comment: One commenter expressed concern that the rules interchange the word "patient" and "client" and recommended using the same term throughout the rules.

Response: The board agrees and has changed the term "patient" to "client" throughout the rules, when appropriate.

Comment: Two commenters expressed concern regarding §741.41(c)(1). The commenters stated that the requirement to provide a written report of evaluations within 60 days would unduly increase the administrative workload of audiologists.

Response: The board agrees. The following change was made as a result of the comment. Section 741.41(c)(1) has been revised to require that an audiologist shall fully inform clients of the results of an evaluation within 60 days upon request.

Comment: One commenter questioned whether §741.42(5)(C) is necessary, stating that it is ambiguous and open to interpretation. The commenter stated that the substance of the rule implies that a license holder would intentionally mislead the public and that the rule is also covered by §741.41(a)(9), which requires a license holder to provide accurate information to the public and to clients.

Response: The board disagrees. The language of the rule mirrors Texas Occupations Code §101.201, which applies to health professions generally, including speech-language pathologists

and audiologists. No change was made as a result of the comment.

Comment: One commenter questioned whether §741.42(5)(D) is necessary, believing that it is covered under other rules requiring a license holder to provide accurate information to the public and clients.

Response: The board disagrees. The language of the rule mirrors Texas Occupations Code §101.201, which applies to health professions generally, including speech-language pathologists and audiologists.

Comment: Two commenters expressed concern regarding §741.42(5)(H), which prohibits a license holder from advertising or using a professional name, title, or professional identification that is expressly or commonly reserved for or used by another profession or professional. The commenters stated that audiologists who have completed the Doctor of Audiology degree will be prohibited from using the title "doctor" when they have rightfully earned it. One of the commenters also stated that the rule conflicts with §741.41(a) and §741.41(b)(13). The commenter also stated that this rule will prohibit audiologists who have other advanced training from advertising or advising the public that they have completed advanced training.

Response: The board disagrees. It is commonly accepted that persons who hold a doctorate degree may use the title "doctor." There is no conflict with other rules in Chapter 741. The rule does not prohibit a license holder from advertising that the license holder has received advanced training, as long as such advertising is not false, misleading, or deceptive. The language of the rule mirrors Texas Occupations Code §101.201, which applies to health professions generally, including speech-language pathologists and audiologists. No change was made as a result of the comments.

Comment: One commenter expressed concern about §741.44(b)(4) which requires that a license holder shall not supervise more than a total of four interns and/or assistants. The commenter stated the rule is excessively restrictive in the public school setting and recommended that a license holder be allowed to supervise a greater number of assistants.

Response: The board disagrees. The commenter's position does not take into account the total number of clients receiving services. The supervising license holder bears legal and ethical responsibility for the entire caseload. The board believes that the rule is appropriate as proposed, and is consistent with American Speech-Language Hearing Association standards. Additionally, the rule provides for an exception allowing for the supervision of more than four interns and/or assistants if the supervisor submits documentation of the supervisor's ability to manage the entire caseload. No change was made as a result of the comment.

Comment: One commenter expressed concern regarding §741.44(c)(2) and indicated that the reference in the rule to §741.65 should be §741.64.

Response: The board agrees and §741.44(c)(2) is changed accordingly.

Comment: One commenter expressed concern regarding §741.64(i)(3) and (k)(4) and (5), and stated that the rules are overly restrictive and do not reflect federal law. The commenter stated that the parent or local school district may allow any person, including a speech-language pathology assistant, to attend any Admission, Review, and Dismissal (ARD) meeting.

Response: The board disagrees that the rules are overly restrictive. While the board recognizes that, under federal law, a parent or local school district may allow any person to attend an ARD meeting, federal law does not provide that any person may attend an ARD meeting representing speech-language pathology. The board's rules address attendance as a representative of special education and speech-language pathology. The board emphasizes that there is no conflict with federal law. No change was made as a result of the comment, however, the rule was modified as a result of another comment.

Comment: Regarding §741.64(i)(4) and (k)(6), one commenter stated that an assistant should be allowed to present Individual Educational Plan (IEP) goals without the goals being the sole creation of the supervisor. The commenter stated that federal law requires that the IEP team shall develop goals and stated that this rule is illegal under federal law.

Response: The board disagrees. The board strongly believes that IEP goals to be presented at the ARD meeting must be developed by the supervising speech-language pathologist, who is the professional with the training, experience, and skills necessary to develop the goals. The board is fully aware that the final approved IEP is a team effort. As the commenter indicates, draft goals and objectives are developed prior to the ARD meeting. These are the goals and objectives referenced in the rule. The rule is not illegal and does not exceed the scope of federal law. No change was made as a result of the comment.

Comment: Regarding §741.64(i)(5), one commenter stated that the proposal that an assistant discontinue participation in the ARD meeting when questions or changes arise is wholly unworkable and disruptive to the process.

Response: The board disagrees. It is in the client's best interest to discontinue and reconvene the ARD meeting if questions or changes arise regarding the goals developed by the supervising speech-language pathologist. The supervising speech-language pathologist is the professional with the experience, training, and knowledge to address specific questions regarding speech therapy and regarding substantive changes to the IEP goals relating to speech-language pathology. No change was made as a result of the comment.

Comment: One commenter stated that any rule proposal relating to the ARD process, development of IEPs, or the public school generally should be submitted to Texas Education Agency for approval.

Response: The board notifies all stakeholders, including Texas Education Agency, of rule proposals. However, there is no requirement of law that another agency must approve the rules of the board. The board's rulemaking authority is established in Texas Occupations Code §402.202. No change was made as a result of the comment.

Comment: One commenter expressed concern regarding §741.64(i)(3), which required that an assistant may only attend annual review ARD meetings for students with a sole diagnosis of articulation disorder. The commenter recommended specific language to replace the proposed language which would allow an assistant to attend an annual review ARD meeting for any student for whom the assistant provides services.

Response: The board agrees. Section 741.64(i)(3) as adopted incorporates the recommended language to the paragraph. Some of the recommended language was also incorporated as new §741.44(e).

Comment: One commenter expressed concern regarding §741.81(b)(5) and recommended that the phrase "or other recognized accrediting body" be included which would allow the acknowledgment of programs accredited by bodies other than the American Speech-Language Hearing Association Council on Academic Accreditation.

Response: The board agrees, but the rule cannot be modified due to a restriction found within the board's enabling statute. Texas Occupations Code, §401.304, requires that an applicant for a license must possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders from a program accredited by the American Speech-Language-Hearing Association in an accredited or approved college or university. No change was made as a result of the comment.

Comment: One commenter expressed concerns regarding §741.81(d)(2)(B) and recommended adding board certification by the American Board of Audiology as another option for recognition of the supervisor of an out-of-state internship, if the other state does not require licensing.

Response: The board agrees, but the rule is not being modified due to a restriction found within the board's enabling statute. Texas Occupations Code, §401.304, requires that an applicant for a license must possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders from a program accredited by the American Speech-Language-Hearing Association in an accredited or approved college or university. The board believes the rule carries out the spirit and intent of the provision. No change was made as a result of the comment.

Comment: Three commenters expressed concern about §741.102(4), regarding the requirement that a hearing instrument consumer shall have a trial period of 30 consecutive days. The commenters recommended the deletion of the word "consecutive" and stated that many times the hearing instrument must be out of the consumer's hands for repair or maintenance. In this case, the trial period must be restarted and this situation may occur more than once. Additionally, one commenter pointed out that federal law does not require a 30-day trial period.

Response: The board disagrees with the commenters and no change was made as a result of the comments. The Audiology Scope of Practice Committee and the board engaged in significant debate regarding this recommendation. While the board understands the concerns of the commenters, it is not aware of actual situations in which the rule has caused a hardship for license holders. The rule is intended to ensure consumer satisfaction and protection. The board will continue discussion of this issue upon receipt and analysis of consumer complaints on this topic. Additionally, the 30-day trial period is mandated by state law relating to the regulation of audiologists in Texas Occupations Code, §401.403(b)(5).

Comment: Two commenters expressed concern regarding §741.102(5) and both encouraged addressing the issue as broadly as possible.

Response: The board agrees. The following change was made as a result of the comment. Section 741.102(5) is modified to read "When amplification is fit, the audiologist shall verify appropriate fit of the amplification, which may include real ear measures, functional gain measures, or other professionally accepted measures."

Based on staff and board member review and comments, the board is making the following changes to strengthen the intent and accuracy of the sections.

Change: A semicolon was added at the end of §741.12(a)(4) for proper punctuation.

Change: The language of §741.62(h)(3) is modified to improve draftsmanship of the paragraph which now reads "the internship will be successfully completed after no more than two attempts."

Change: The requirements in §741.62(k) and §741.82(j) that documentation of the intern's evaluation shall be submitted with the completed intern plan is modified to require that the documentation shall be "submitted to the board upon request."

Change: The hours per week were changed from "15 hours" to "14 hours" in §741.62(h)(4)(A) and §741.82(h)(4)(A) to correct a minor numerical error in the proposal.

Change: Concerning §741.64(e)(1)(B)(ii), the phrase "licensed speech-language pathologist trainer" was modified to "licensed speech-language pathologist who will provide the training."

Change: Concerning §741.64(g)(7) and §741.84(h)(7), the paragraphs were modified to require that the license holder who supervises an assistant shall maintain supervisory records for a period of three years.

Change: The word "stipulations" was changed from upper case to lower case in §741.64(i).

Change: Concerning §741.64(j)(2) and (3), the paragraphs were modified to correct punctuation errors and improve grammar.

Change: Punctuation errors were corrected in §741.64(k)(1).

Change: Concerning §741.64(m) and §741.84(l), the rules were modified to delete the phrase "shall audit 10% of licensed assistants each month" and replace it with "may audit a random sampling of licensed assistants."

Change: Concerning §741.103(1), the rule was modified to add new language to read "The chart is excerpted from the standard for illustrative purposes and is based on a 125 to 8,000 Hz test frequency range." The Figure in §741.103(1) is modified to correct column titles and to correct minor errors and omissions in the chart values.

Change: Concerning §741.141(b) and (c), the words "approval designee" were deleted from each subsection of the rule.

Change: Concerning §741.164(a), the sentence "The postmark date is the date of mailing." was deleted because the sentence was unnecessary.

Change: Concerning §741.161(g)(4), formatting changes were prepared for formatting for proper paragraph and subsection referencing.

Change: Concerning §741.181(c) and (d), the fee amounts of "\$50.00" was corrected to "\$50" to be consistent with the format of the fee amounts throughout the rules.

In addition to staff and board member comments, six comment letters were received. Two commenters were individuals. The commenter were generally in favor of the rules, but expressed concerns, asked questions, and made recommendations regarding several rules.

Other commenters were Texas Speech-Language-Hearing Association, Texas Academy of Audiology, American Academy of Audiology, and Texas Council of Administrators of Special Edu-

cation. The commenters were generally in favor of the rules, but expressed concerns, asked questions, and made recommendations. Some commenters did express opposition to specific provisions, as described in this preamble.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

The repeal is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601352

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §741.1

The new section is adopted under Texas Occupations Code, §401.202 which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Refer to Texas Occupations Code, §401.001, for definitions of additional words and terms.

(1) Act--Texas Occupations Code, Chapter 401, relating to speech-language pathologists and audiologists.

(2) Assistant in Speech-Language Pathology--An individual who provides speech language pathology support services to clinical programs under supervision of a licensed speech-language pathologist.

(3) Assistant in Audiology--An individual who provides audiological support to clinical programs under supervision of a licensed audiologist.

(4) Delegation--The supervisor of an assistant may delegate certain services to the assistant; however, the supervisor is ultimately responsible for all services provided.

(5) Dispense--To directly or indirectly provide or deliver a product by U.S. Postal Service or any commercial delivery service to a consumer.

(6) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians

are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(7) Extended absence--More than two consecutive working days for any single continuing education experience.

(8) Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(9) Fit--Initial selection, adjustment, programming, or modification of a personal amplification device or system.

(10) Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(11) Hearing instrument--A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(12) Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(13) Sale or purchase--Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(14) Under the direction of--The licensed speech-language pathologist or audiologist directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

(15) Used hearing instrument--A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instrument for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instrument health professional selected by the dispenser to assist the buyer in making such a determination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601353

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. THE BOARD

22 TAC §§741.11 - 741.15

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to

administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601354

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §§741.11 - 741.15

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.12. Committees.

(a) The presiding officer may appoint board members to committees to assist the board in its work. All committees shall consist of no more than four members and shall make regular reports to the board by interim written reports or at regular meetings. Standing committees may include:

- (1) complaints;
- (2) rules;
- (3) speech-language pathology scope of practice;
- (4) audiology scope of practice;
- (5) complaints; and
- (6) legislative review.

(b) Board members may also be appointed to individually assist the board office with specific issues. The board member shall report any decisions made to the full board at the next scheduled meeting for ratification. Items that may be discussed include:

- (1) fees/budget;
- (2) applications/renewals;
- (3) continuing education;
- (4) exemptions to the Act;
- (5) supervision of interns and assistants;
- (6) public relations;
- (7) health professions council; and
- (8) fitting and dispensing of hearing instruments.

(c) Members appointed to the complaints committee shall consist of one audiologist, one speech-language pathologist, and one public member. The committee chair may call a meeting whenever necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601355

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. SCREENING PROCEDURES

22 TAC §§741.31 - 741.33

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601356

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §§741.31 - 741.33

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601357

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

SUBCHAPTER D. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

The repeal is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601358

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

22 TAC §§741.41 - 741.45

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.41. Professional Responsibilities of License Holders.

(a) A licensee shall:

- (1) engage in only those aspects of the profession that are within the scope of the licensee's competence considering level of education, training, and experience;
- (2) insure a safe therapy environment;
- (3) provide services as specified in the treatment plan, Individual Education Plan (IEP), or Individualized Family Service Plans (IFSP);
- (4) seek appropriate medical consultation whenever indicated;
- (5) seek to identify competent, dependable referral sources for clients;
- (6) maintain objectivity in all matters concerning the welfare of the client;
- (7) ensure that all equipment used is in proper working order and is properly calibrated;

(8) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided; and

(9) provide accurate information to clients and the public about the nature and management of communicative disorders and about the profession and the services rendered.

(b) A licensee shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) jeopardize a client's safety by any inattentive behavior;

(3) guarantee, directly or by implication, the results of any therapeutic procedures except as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(4) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(5) provide services if the services cannot be provided with reasonable skill or safety to the client;

(6) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(7) engage in sexual contact, including intercourse, kissing, or fondling, with a client or an assistant, intern, or student supervised by the licensee;

(8) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's provision of professional services;

(9) evaluate or treat speech, language, or hearing disorders solely by written, telephone, or electronic/video correspondence or communication;

(10) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(11) participate in activities that constitute a conflict of professional interest which may include the following:

(A) exclusive recommendation of a product that the licensee owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) restriction of freedom of choice for sources of services or products;

(12) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit;

(13) misrepresent his or her training or competence; or

(14) falsify records.

(c) A licensee shall fully inform clients of the:

(1) results of an evaluation within 60 days, upon request;

(2) nature and possible effects of the services rendered; and
(3) nature, possible effects, and consequences of activities if the client is participating in research or teaching activities.

(d) A licensee shall inform the board of violations of this code of ethics or of any other provision of this chapter.

(e) A licensee shall comply with any order relating to the licensee which is issued by the board.

(f) A licensee shall not aid or abet the practice of an unlicensed person when that person is required to have a license under the Act.

(g) A licensee shall report in accordance with the Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person.

(h) A licensee shall not interfere with a board investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the board or the board's designee or by the use of threats or harassment against any person.

(i) A licensee shall cooperate with the board by promptly furnishing required documents and by promptly responding to a request for information from or a subpoena issued by the board or the board's designee.

(j) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to licensees.

(k) A licensee who provides direct client care shall comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers.

(l) A licensee shall be subject to disciplinary action by the board if the licensee or registrant is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31, relating to the Crime Victims Compensation Act.

§741.42. Advertising.

A licensee shall not present false, misleading, deceptive, or not readily verifiable information relating to the services of the licensee or any person supervised or employed by the licensee which includes, but is not limited to:

(1) advertising audiological services when an audiologist is not readily available to assist clients;

(2) using professional or commercial affiliations in any way that would mislead clients or the public;

(3) presenting false, misleading, or deceptive information in connection with an application by the licensee for a license issued under the Act, or for employment to provide speech-language pathology or audiology services;

(4) presenting false, misleading, or deceptive information relating to the following:

(A) any advertisement, announcement, or presentation;

(B) any announcement of services;

(C) letterhead or business cards;

(D) commercial products;

(E) billing statements or charges for services;

(F) facsimile broadcast; or

(G) website;

(5) presenting false, misleading, or deceptive advertising that is not readily subject to verification including any manner of communication referenced in paragraph (4) of this section and advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(E) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(F) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(G) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; and

(H) advertises or uses a professional name, a title, or professional identification that is expressly or commonly reserved for or used by another profession or professional.

§741.44. Requirements, Duties, and Responsibilities of Supervisors.

(a) A licensee must have three years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience, he or she may submit a written request outlining his or her qualifications and the reason for the request. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(b) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a license;

(B) the supervisor has been approved by the board of-
fice;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the board office approves the supervisory arrangement; and

(4) supervise no more than a total of four interns and/or assistants. An exception may be made allowing supervision of more than four individuals if the supervisor submits documentation demonstrating their ability to manage the entire caseload. The board's designee will determine if an exception is granted.

(c) In addition to the provisions listed in subsection (b) of this section, a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §741.64 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License).

(d) A licensed intern or assistant shall abide by the decisions made by the supervisor relating to the intern's or assistant's scope of practice. In the event the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the board office and any other appropriate authority.

(e) A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial individual educational plan or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601359

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.66

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601360

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.65

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Act and §741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology. Within 15 working days of receipt of the request, the board's designee shall evaluate the documentation and shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript is required and shall be evaluated under §741.61(b) of this title.

(d) Masters students. An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) Doctoral students. An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience

requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying that the supervisor has met this requirement. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience the supervisor shall submit a written request outlining the supervisor's qualifications and justifications for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision form shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, the primary and secondary supervisors shall be identified and the supervisory form must be signed by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately. The board shall hold the supervisor responsible for the practice of the intern until the supervisor notifies the board, in writing, of the change in supervision.

(4) Should the intern practice without approval from the board office, disciplinary action may be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(h) The internship shall:

- (1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;
- (2) be completed within a maximum period of 36 months once initiated;
- (3) be successfully completed after no more than two attempts;
- (4) consist of a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which

clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 30 hours per week in direct client clinical work. Part-time equivalent is defined as follows:

- (A) 0 - 14 hours per week--no credit will be given;
- (B) 15 - 19 hours per week for over 72 weeks;
- (C) 20 - 24 hours per week for over 60 weeks; or
- (D) 25 - 29 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the Board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) and (2) of this section shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted. Within 15 working days of receipt of the request, the board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) An intern who is employed full-time as defined by subsection (h)(3) of this section and wishes to practice at an additional site, shall submit the intern plan and agreement of supervision form for that site. At the additional site, the intern shall receive the minimum of one hour of face-to-face supervision and one hour of indirect supervision per month.

(k) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the board upon request.

(l) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of

the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) A primary supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.

(3) Secondary supervisor(s) who cease supervising an intern shall submit written documentation of the intern's performance under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(m) In any professional context the licensee must indicate the licensee's status as a speech-language pathology intern.

(n) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

(o) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:

(1) The current supervisor shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the speech-language pathology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

(3) Supervision required while awaiting approval of either the speech-language pathology license or the temporary certificate of registration shall be consistent with supervision requirements established in subsection (h) of this section.

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section within 10 years of the date of application for the assistant license. The applicant for the assistant license must:

(1) possess a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) have acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in speech-language pathology core curriculum as follows:

(A) at least three semester hours in language disorders;

(B) at least three semester hours in speech disorders; and

(C) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. Within 15 working days of receipt, the board's designee shall evaluate the documentation and shall either approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 semester credit hours in communicative sciences or disorders which may include some leveling hours. Within 15 working days of receipt, the board's designee shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(e) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the assistant with the training to acquire these hours shall submit:

- (A) the supervisory responsibility statement form; and
- (B) a clinical deficiency plan that shall include the following:

- (i) name and signature of the assistant;
- (ii) name, qualifications, and signature of the licensed speech-language pathologist who will provide the training;
- (iii) number of hours of observation and/or assisting experience lacking;
- (iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and
- (v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

- (A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;
- (B) a rating scale of the assistant's performance; and
- (C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completion of the training identified in the clinical deficiency plan.

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the assistant and trainer if acceptable.

(6) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraph (4) of this subsection.

(7) In the event, another licensed speech-language pathologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraph (4) of this subsection

has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit a written request outlining the supervisor's qualifications and a justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisor responsibility statement shall be submitted upon:

- (A) application for a license;
- (B) license renewal when there is a change in supervisor;
- (C) other changes in supervision; and
- (D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the assistant, the primary and secondary supervisor shall be identified on the supervisor responsibility statement.

(3) An assistant may renew the license if there is a change in supervision, but may not practice until a new supervisory responsibility statement form is approved.

(4) In the event the supervisor ceases supervision of the assistant, the supervisor shall notify the board, in writing, and shall inform the assistant to stop practicing immediately. The board shall hold the supervisor responsible for the practice of the assistant until written notification has been received in the board office.

(5) Should the assistant practice without approval from the board office, disciplinary action may be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising speech-language pathologist.

(2) Following the initial diagnostic contact, the supervising speech-language pathologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) Indirect methods of supervision may include audio and/or video tape recording, report review, telephone or electronic communication, or other means of reporting.

(4) The supervising speech-language pathologist shall provide a minimum of two hours per week of supervision, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit a proposed plan of supervision for review by the board's designee. Within 15 working days of receipt of the request, the board's designee

shall accept or reject the plan. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the assistant;
- (B) the name and signature of the supervisor;
- (C) the proposed plan of supervision;
- (D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

- (F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or reject the plan.

(7) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor. An assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(B) An assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed supervising speech-language pathologist need not be present when the assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the assistant.

(2) The licensed supervising speech-language pathologist shall keep job descriptions and performance records. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the speech-language pathologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board if the test developer does not specify a graduate degreed examiner and the supervisor has determined the assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed speech-language pathologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist.

(i) A licensed speech-language pathology assistant may represent special education and speech pathology at Admission, Review and Dismissal (ARD) meetings with the following stipulations.

(1) The speech-language pathology assistant shall have written documentation of approval from the licensed, board approved SLP supervisor.

(2) The speech-language pathology assistant shall have three years experience as a speech pathology assistant in the school setting.

(3) The speech-language pathology assistant may attend, with written approval of the supervising speech-language pathologist, a student's annual review ARD meeting if the meeting involves a student for whom the assistant provides services. If an assistant attends a meeting as provided by this rule, the supervising speech-language pathologist is not required to attend the meeting. A supervising speech-language pathologist must attend an ARD meeting if the purpose of the meeting is to develop a student's initial individual educational plan or if the meeting is to consider the student's dismissal, unless the supervising speech-language pathologist has submitted their recommendation in writing on or before the date of the meeting.

(4) The speech-language pathology assistant shall present Individual Educational Plan (IEP) goals and objectives that have been developed by the supervising SLP and reviewed with the parent by the SLP.

(5) The speech-language pathology assistant shall discontinue participation in the ARD meeting, and contact the supervising SLP, when questions or changes arise regarding the IEP Document.

(j) The licensed, board approved supervisor of the assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by an SLP assistant and that the SLP assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objective and review them with the SLP assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the assistant.

(k) The assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling; or

(17) write or sign any formal document relating to the provision of speech-language pathology services (e.g., treatment plans, diagnostic reports, reimbursement forms).

(l) In any professional context the licensee must indicate the licensee status as a speech-language pathology assistant.

(m) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant and supervisor by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed speech-language pathologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601361

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER F. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF AUDIOLOGISTS

22 TAC §§741.81 - 741.86

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601362

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81 - 741.85

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.82. *Requirements for an Intern in Audiology License.*

(a) An applicant for the intern in audiology license shall meet the requirements set out in the Act and §741.81(a) - (c) of this title (relating to Requirements for an Audiology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. The applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript is required and shall be evaluated under §741.81(b) of this title.

(d) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctor of audiology (Au.D.) program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.81(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of audiology with six hours in speech-language pathology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in audiology and possess a master's degree or higher with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The Board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the Board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately.

(4) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) be successfully completed in no more than two attempts;

(4) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment is defined as a minimum of 30 hours per week in direct client clinical work. Part-time equivalent is defined as follows:

- (A) 0 - 14 hours per week--no credit will be given;
- (B) 15 - 19 hours per week for over 72 weeks;
- (C) 20 - 24 hours per week for over 60 weeks; or
- (D) 25 - 29 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) - (2) of this section shall request an extension, in writing, explaining the reason for the request. Evaluation of the intern's progress or performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for completed segments must be submitted. The board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the audiology license is granted. A copy of this documentation must be submitted to the board upon request.

(k) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision

form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the previous supervisor and the intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) A primary supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) A secondary supervisor who ceases supervising an intern shall submit written documentation of the intern's performance under their supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(6) In any professional context the licensee must indicate the licensee's status as an audiology intern.

(l) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) an audiology license under §741.81 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) if the intern has not passed the examination referenced in §741.121 of this title.

(m) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the audiology license or the temporary certificate of registration in audiology as follows:

(1) The current supervisor(s) shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the audiology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

§741.84. Requirements for an Assistant in Audiology License.

(a) An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section within 10 years of the date of application for the assistant license.

(b) An assistant is an individual who provides audiology support services to clinical programs under supervision of a licensed audiologist and meets the following requirements:

(1) possesses a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in audiology core curriculum and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of audiology and 25 hours of clinical assisting experience in the area of audiology obtained within an educational institution or in one of its cooperating programs.

(c) The baccalaureate degree shall be completed at a college or university that has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (b) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Revocation, Suspension, Emergency Suspension, or Denial) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 graduate hours in communicative sciences or disorders which may include some leveling hours.

(e) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(f) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the assistant with the training to acquire these hours shall submit:

- (A) the supervisory responsibility statement form; and
- (B) a clinical deficiency plan that shall include the following:

- (i) name and signature of the assistant;
- (ii) name, qualifications, and signature of the licensed audiologist trainer;
- (iii) number of hours of observation and/or assisting experience lacking;
- (iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and
- (v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completions of the training identified in the clinical deficiency plan.

(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.

(6) Board staff shall evaluate the documentation in paragraphs (4) and (5) of this subsection and inform the assistant and trainer if acceptable.

(7) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) In the event, another licensed audiologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraphs (4) and (5) of this subsection has not been received and approved by the board office, approval for the change shall not be granted.

(g) A supervisory responsibility statement shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this

requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisory responsibility statement shall be submitted upon:

- (A) application for a license;
- (B) license renewal;
- (C) changes in supervision; and
- (D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the assistant, the primary supervisor shall be identified and separate supervisor responsibility statements submitted by each supervisor.

(3) An assistant may renew the license but may not practice until a new supervisor responsibility statement is approved.

(4) In the event the supervisor ceases supervision of the assistant, the assistant shall stop practicing immediately.

(5) Should the assistant practice without approval from the board office, disciplinary action shall be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) A licensed audiologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising licensed audiologist.

(2) Following the initial diagnostic contact, the supervising audiologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) The supervising audiologist(s) shall provide the minimum of two hours per week, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

- (A) the name of the assistant;
- (B) the name and signature of the supervisor;
- (C) the proposed plan of supervision;
- (D) the exact time frame for the proposed plan;
- (E) the length of time the assistant has been practicing under the requestor's supervision; and
- (F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising audiologist shall annually resubmit a request to be evaluated by the board's designee.

(7) Supervisory records shall be maintained by the licensed audiologist for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor.

(B) An assistant may not conduct an evaluation which includes diagnostic testing, test and observation interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(i) Although the licensed supervising audiologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist need not be present when the assistant is completing the assigned tasks; however, the licensed audiologist shall document all services provided and the supervision of the assistant.

(2) The licensed audiologist shall keep job descriptions and performance records. Records shall be current and be made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed audiologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed audiologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) conduct aural habilitation or rehabilitation;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed audiologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist.

(5) The assistant shall not:

(A) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(B) interpret results of routine tests;

(C) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(D) represent audiology at staff meetings or on an admission, review and dismissal (ARD);

(E) attend staffing meeting or ARD without the supervisor being present;

(F) design a treatment program;

(G) determine case selection;

(H) present written or oral reports of client information;

(I) refer a client to other professionals or other agencies;

(J) use any title which connotes the competency of a licensed audiologist; or

(K) practice as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(j) In any professional context the licensee must indicate the licensee's status as an audiology assistant.

(k) An assistant may not engage in the fitting, dispensing or sale of a hearing instrument; however, an assistant who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant license when performing those activities.

(l) The board may audit a random sampling of licensed assistants for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed audiologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601363

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

The repeal is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas

Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601364

Sherry Sancibrian
Chair

State Board of Examiners for Speech-Language Pathology and
Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §741.91

The new section is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601365

Sherry Sancibrian
Chair

State Board of Examiners for Speech-Language Pathology and
Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§741.101 - 741.103

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601366

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and
Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §§741.101 - 741.103

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.102. General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology registered to fit and dispense hearing instruments shall:

(1) adhere to the federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations, §801.420 and §801.421;

(2) insure that all equipment used by the licensee within his or her scope of practice shall be calibrated to insure compliance with the American National Standards Institute (ANSI), S3.6, 1989, Specification for Audiometers, or S3.6, 1996, Specification for Audiometers.

(3) receive a written statement before selling a hearing instrument that is signed by a licensed physician preferably one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish medical evaluation before purchasing a hearing instrument."; and

(4) inform the consumer of a hearing instrument by written contract of a trial period of 30 consecutive days. The contract shall include a specific date by which the client must return the instrument to qualify for a refund. If the date falls on a holiday, weekend, or a day the business is not open, the effective date shall be the first day the business reopens.

(A) All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(B) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

(5) When amplification is fit, the audiologist shall verify appropriate fit of the amplification, which may include real ear measures, functional gain measures, or other professionally accepted measures.

§741.103. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology who fits and dispenses hearing instruments, shall comply with this section when testing hearing for the purpose of determining the need for amplification.

(1) Licensees must adhere to the American National Standards Institute (ANSI, S3.1, 1999) octave band criteria for permissible ambient noise levels during audiometric testing as shown on the chart. The chart is excerpted from the standard for illustrative purposes and is based on a 125 to 8,000 Hz test frequency range.
Figure: 22 TAC §741.103(1)

(2) This requirement is best met when a stationary acoustical enclosure is utilized.

(3) A stationary acoustical enclosure is any fixed enclosed space in which an individual is located for the purpose of testing hearing to threshold. A stationary acoustical enclosure may also be known as an audiometric or hearing test booth, room, suite, area, or space.

(4) Procedures referenced in the Act, §401.401, should be followed when testing outside of a stationary acoustical enclosure.

(A) Hearing testing that occurs in an area that does not meet the standard of a stationary acoustical enclosure for the purpose of determining the need for amplification is not considered a diagnostic or threshold measurement.

(B) In the event amplification is fit and verification measures cannot be completed in a stationary acoustical enclosure, instrumentation that is minimally affected by ambient noise including but not limited to, real ear measures, shall be utilized to assure the appropriate fit of the amplification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601367

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.111, §741.112

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601368

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

22 TAC §741.111, §741.112

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601369

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.121

The repeal is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601370

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §741.121

The new section is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601371

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER K. ISSUANCE AND DISPLAY OF LICENSE AND REGISTRATION

22 TAC §741.141, §741.142

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601372

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER K. ISSUANCE OF LICENSE

22 TAC §741.141

The new section is adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.141. Issuance of License.

(a) Except as provided by subsections (b) and (c) of this section, the board shall issue an initial license to an applicant for a license after the fee, forms, and other documentation have been received and approved by the board or board staff. A license will be issued for a two-year pro-rated term, as determined by the board, expiring in the licensee's birth month. The effective date shall be the date of receipt by the board office or board's designee of the last item required for approval. The expiration date shall be determined as follows.

(1) An applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is two years past the applicant's next birth month.

(2) An applicant approved for less than 12 months from the applicant's next birthday, but more than three months from the applicant's next birthday, shall be issued a license to expire upon the last day of the applicant's next birth month of the following year.

(b) The board shall issue an initial license to an applicant for an intern in speech-language pathology or an intern in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the date of receipt by the board office of the last item required for approval. The license shall expire one year past the effective date.

(c) The board shall issue a temporary certificate of registration in speech-language pathology or a temporary certificate of registration in audiology to an applicant after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the date of receipt by the board office of the last item required for approval. The registration shall expire eight weeks after the next scheduled examination as required by §741.121 of this title (relating to Examination Administration). This certificate is non-renewable and there is no allowed grace period after expiration of the certificate.

(d) Licenses issued under subsections (a) - (b) of this section may be renewed as required by §741.161 of this title (relating to Renewal Procedures).

(e) A license or certificate issued by the board remains the property of the board.

(f) The board shall issue a duplicate license or certificate, upon written request and payment of the duplicate fee.

(g) The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601373

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER L. LICENSE AND REGISTRATION RENEWAL

22 TAC §§741.161 - 741.165

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601374

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§741.161 - 741.165

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.161. *Renewal Procedures.*

(a) The Act provides for the renewal of a license. A license issued under §741.141(a) - (b) of this title (relating to Issuance of License) is subject to renewal upon expiration if a licensee wishes to practice under the Act and this chapter.

(1) A licensee may renew by mailing to the board office the renewal form, fee, and all required documents.

(2) A licensee may choose to renew online. The license is not considered renewed until all required documents have been received in the board office.

(b) A license or registration issued under §741.141(c) of this title cannot be renewed.

(c) The board office shall mail notice of expiration to each licensee approximately 45 days prior to the expiration date of the license. The board is not responsible for lost, misdirected, or undelivered notices of expiration if sent to the address last reported to the board.

(d) A licensee shall have acquired approved continuing education hours as defined in §741.162 of this title (relating to Requirements for Continuing Professional Education) in order to renew a license. Any continuing education hours earned before the original effective date of the license being renewed are not acceptable.

(e) A licensee or registrant is responsible for submitting the required fee, forms, and other documentation prior to the expiration date of the license. The postmark date is the effective date of the renewal. If all required documentation is submitted online, the effective date of submission is the date of the online transaction.

(f) A licensee is required to provide current address, telephone number, and employment information. Corrections may be made on the renewal form or by submitting the current information in writing. A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name.

(g) The board office shall not consider a license to be renewed until the following has been received and found acceptable:

(1) completed, dated, and signed renewal form, including acknowledgment of having earned the required continuing professional education hours;

(2) license renewal fee; and

(3) if selected for audit as defined in subsection (o) of this section, the record of continuing education hours earned/used/available/dropped form, referred to as the CE log, which covers at least the past three renewal periods and verification of approved continuing education hours.

(4) If the licensee chooses to use the online renewal process, the renewal form and renewal fee, as detailed in paragraphs (1) and (2) of this subsection, will be accepted automatically. The license will be considered renewed when the online renewal is processed in the board office and board staff determine that all documentation has been provided. If no additional information is required, the effective date of renewal shall be the date of the online transaction. If additional documentation is required, such as documentation for an audit as defined in subsection (o) of this section, that documentation must be mailed to the board office. Although the license may complete the renewal process online, the board office shall not consider the license renewed until the additional documentation has been received and accepted by the board office.

(h) An intern shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section;

(2) evaluation of the intern's progress or performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for completed segments must be submitted; and

(3) the intern plan and agreement of supervision form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall submit a signed statement explaining the reason for not practicing.

(i) An assistant shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section; and

(2) the supervisory responsibility statement form unless the assistant is currently not practicing or the supervisor has not changed.

(j) An individual who meets the requirements set out in the Act and wishes to renew the expired license shall submit his or her request, in writing, with the following:

(1) an original letter from the licensing board where he or she currently holds a valid license verifying:

(A) the professional area in which the license was issued;

(B) the date of issue;

(C) the expiration date of the license; and

(D) whether disciplinary action has been taken;

(2) a reinstatement fee as determined by the board.

(k) A licensee may renew the license under the provisions of the Act after expiration of the 60-day grace period without a late renewal penalty fee being assessed due to a medical hardship whether or not the licensee met the requirements of §741.162 of this title. If the following is submitted and found acceptable by the board office, the license shall be renewed:

(1) a signed statement requesting renewal due to medical hardship;

(2) an original letter signed by the licensee's physician stating the licensee was unable to practice for at least six months during the renewal period because of a physical or mental disability;

(3) the completed, dated, and signed renewal form;

(4) any approved continuing education hours earned during the renewal period; and

(5) the license renewal fee.

(l) A licensee may petition the board if the licensee does not meet the requirements of subsection (m) of this section but believes he or she has a valid medical reason for the late renewal. The petition shall be reviewed by the board's designee within 15 working days of receipt of the request.

(m) The board shall monitor a licensee's compliance with the continuing education requirements by the use of a random audit. In the event the licensee has been selected for an audit to verify compliance with the continuing education requirement as described in §741.162 of this title, the license shall not be renewed until the licensee submits acceptable proof of having earned the required continuing education hours. If this documentation is not received or found unacceptable, the licensee shall be notified by the board office of the deficiency.

(n) Failure to timely furnish required documentation or providing false information during the audit or renewal process is grounds for disciplinary action against the licensee.

(o) The board shall deny renewals pursuant to the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(p) The board shall deny renewals when a license holder is subject to the suspension of license provisions relating to child support and child custody in the Family Code, Chapter 232.

(q) If all conditions required for renewal are met prior to expiration of the 60-day grace period, the board shall issue a renewed license.

(r) If the licensee has not completed the renewal process upon expiration of the 60-day grace period, he or she shall cease practicing. The licensee shall then renew his or her license in accordance with §741.164 of this title (relating to Late Renewal of a License) if he or she wishes to practice.

(s) A suspended license is subject to expiration and may be renewed as provided in this subchapter; however, the renewal does not entitle the licensee to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended, until such time as the license is fully reinstated.

(t) A license revoked on disciplinary grounds shall not be renewed; however, the license may be reinstated under the Act, §401.457. The former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect, plus the late renewal penalty fee, if any, accrued since the time of the license revocation.

§741.164. Late Renewal of a License.

(a) A licensee who fails to renew his or her license before the end of the 60-day grace period shall be assessed a late renewal penalty as required by the Act, unless the license had been placed on inactive status.

(b) The Act prohibits an individual from practicing after expiration of the 60-day grace period. Penalties for doing so are defined in the Act.

(c) The following shall be submitted to renew a license after expiration of the grace period:

(1) the board late renewal of a license form which requires a written, signed statement from the licensee and his or her employer(s) documenting the licensee's practice activities since expiration of the 60-day grace period under the Act and this chapter;

(2) the late renewal penalty fee as set out in §741.181 of this title (relating to Schedule of Fees);

(3) CE documentation as required by §741.162(1) of this title (relating to Requirements for Continuing Professional Education); and

(4) verification of continuing education hours earned as required by §741.162(m) of this title.

(d) The following number of continuing education hours shall be required:

(1) if renewing an initial license before the end of the first year of the penalty status, the number of continuing education hours that shall be earned are listed under §741.162(d) of this title;

(2) if renewing before the end of the first year of penalty status, ten continuing education hours or 15 hours for holders of dual speech-language pathology and audiology licenses;

(3) if renewing at the end of the first year of penalty status but before the end of the second year, 20 continuing education hours or 30 hours for holders of dual speech-language pathology and audiology licenses; or

(4) if renewing at the end of the second and final year of penalty status, 30 continuing education hours or 45 hours for holders of dual speech-language pathology and audiology licenses.

(e) Continuing education hours accrued under §741.162(j) or (k) of this title may be used if the hours are available for use when the request for renewal is received by the board.

(f) The random audit for compliance with the continuing education requirements referenced in §741.161(m) of this title (relating to Renewal Procedures) does not apply to late renewal of a license.

(g) If additional documentation is required, the request to renew the license shall remain open no longer than 90 days following the date the board office received the initial request to renew the license. If the documentation requested is not received before the 90 days referenced, the request for late renewal of a license shall be denied and the fee forfeited.

(h) Failure to timely furnish information or providing false information during the late renewal process are grounds for disciplinary action.

(i) If the board office approves the request for late renewal of a license, active status shall begin on the date of approval. The licensee shall earn continuing education hours as required by §741.162 of this title in order to renew the license upon expiration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601375

Sherry Sancibrian
Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

22 TAC §741.181, §741.182

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601376

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



22 TAC §741.181, §741.182

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

§741.181. *Schedule of Fees.*

(a) All fees paid to the board are non-refundable. For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection within the Health Professions Council, as required by Occupations Code, §101.307 (relating to Health Professions Council Funding of Office.) The schedule of fees is as follows:

(1) application and initial license fee:

(A) \$150 for a two year license; or

(B) \$75 for a one year license.

(2) provisional application and initial license fee--\$75;

(3) temporary certificate of registration fee--\$55;

(4) license renewal fee:

(A) \$50 for one year license;

(B) \$100 for a two year license;

(5) dual license fees as a speech-language pathologist and audiologist--each license must be renewed separately and fees will be determined separately:

(6) duplicate license, certificate, or registration fee--\$10;

(7) inactive status fee--\$45;

(8) license verification fee--\$10;

(9) late renewal penalty fee--an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee;

(10) examination fee--the amount charged by the board's designee administering the examination; and

(b) Any remittance submitted to the board in payment of a required fee shall be in the form of a personal check, certified check, or money order unless this section requires otherwise. Checks from foreign financial institutions are not acceptable. Payment may also be made through the online renewal process using an electronic check or credit card.

(c) An applicant whose check for the application and initial license fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remit-

ting to the board a money order or check for guaranteed funds within 30 days of the date of the receipt of the board's notice. Otherwise, the application and the approval shall be invalid. A penalty fee of \$50, in addition to the amount of the check, must be included with the payment remitted to the board office.

(d) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration of the 60-day grace period, a late renewal penalty fee shall be assessed. A penalty fee of \$50, in addition to the amount of the check, must be included with the payment remitted to the board office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601377

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER N. DENIAL, PROBATION, SUSPENSION, OR REVOCATION OF A LICENSE OR REGISTRATION

22 TAC §§741.191 - 741.195

The repeals are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601378

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

22 TAC §§741.191 - 741.201

The new sections are adopted under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 2, 2006.

TRD-200601379

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: March 22, 2006

Proposal publication date: September 2, 2005

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4606

The Commissioner of Insurance adopts §5.4606, concerning the temporary appointment of qualified inspectors to conduct inspections of residential structure re-roofing in Jefferson and Chambers counties, pursuant to Insurance Code Article 21.49 §6A, for purposes of insurability for windstorm and hail insurance from the Texas Windstorm Insurance Association (TWIA). The new section is adopted without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 372). The new section was considered in a public hearing on February 15, 2006 under Docket Number 2634.

The purpose of TWIA is to provide windstorm and hail insurance coverage to residents and businesses in the designated catastrophe areas along the Texas coast that are unable to obtain such coverage in the voluntary market. As a result of the destruction caused by Hurricane Rita along the Texas coast, certain counties, and in particular Jefferson and Chambers counties, are facing massive rebuilding and repair of residential and commercial structures. Both Jefferson and Chambers counties are first tier coastal counties for purposes of Insurance Code Article 21.49, and are therefore subject to significant windstorm and hail damage from any hurricane hitting in that area of the Texas coast. In the Beaumont area alone (Jefferson County), approximately 90% of the residential structures received some type of damage,

and as a result of the tremendous volume of repairs being performed on structures after the storm, there is an overwhelming demand for windstorm inspections and certifications. Under the Insurance Code Article 21.49 §6A, the inspections and certifications are necessary for the structures to be considered insurable property for windstorm and hail insurance from the TWIA. Repair work in these counties will be a long-term process. To assist with the enormous workload of windstorm inspections, the Texas Department of Insurance (Department) has temporarily reassigned its inspectors from other areas on the coast, including Corpus Christi, Angleton, and Bay City, and the TWIA is also providing additional inspection assistance through independent contract inspectors. Even though the number of inspections performed by engineers appointed as qualified inspectors has risen in comparison to the first few months after the storm, and despite the re-assignment of the Department's inspectors and the TWIA contract with independent inspectors, additional qualified inspectors continue to be needed on a temporary basis to meet the increasing demand of requests for inspections by contractors, roofers and homeowners for certification of structures. New §5.4606 is necessary to provide for the qualifications, requirements, and procedures for the appointment of the needed additional qualified inspectors on a temporary basis to conduct re-roof inspections of residential structures during the construction process in Jefferson and Chambers counties, the two counties most affected and most in need. Any inspectors appointed pursuant to new §5.4606 will be able to inspect residential re-roofing in these counties to confirm compliance with windstorm building code standards which will aid in reducing future damage and losses from wind and hail. This will benefit the homeowners, TWIA, insurers, and the state of Texas. The inspection authority granted to the temporary appointees will be limited to inspections of residential re-roofing during the construction process. To ensure that the inspections are conducted properly and in accordance with statutory and regulatory requirements, it is necessary that the temporary appointees be subject to oversight by the Department and the other provisions of the Department's current §5.4604, relating to the appointment of engineers as qualified inspectors. In addition to any other remedy available under the Insurance Code Article 21.49 §6A and Chapters 82 and 84, the temporary appointees will also be subject to the emergency cease and desist provisions of the Insurance Code Chapter 83. This is necessary to ensure that improper inspections are halted as quickly as possible to deter approval of faulty or inadequate re-roofing of residential structures, which could result in certification of structures that do not meet windstorm building code requirements. This is also necessary to prevent additional harm in the damaged areas in Jefferson and Chambers counties.

New §5.4606(a) specifies the qualifications, including necessary experience and training, of persons eligible to apply for a temporary appointment. Subsection (b) defines terms used throughout the section. Subsections (c) - (f) outline the application process for a temporary appointment and specify the necessary forms, affidavits, and other documents needed for application. Subsection (g) specifies financial interest prohibitions for applicants and temporary appointees. Subsection (h) requires that temporary appointees comply and utilize certain specified windstorm inspection forms. Subsection (i) provides that temporary appointees will be subject to the provisions of the Department's current §5.4604, relating to the appointment of engineers as qualified inspectors, including oversight by the Department. Subsection (j) prohibits temporary appointees from delegating any duties that are part of the authorization of their temporary appoint-

ment. Subsection (k) provides that the issuance of a temporary appointment to a qualified inspector only authorizes re-roof inspections of residential structures in Jefferson and/or Chambers counties during the construction process and provides that no other types of inspections by temporary appointees will be valid for purposes of windstorm and hail insurance under the Insurance Code Article 21.49. Subsection (l) provides that the expiration date for a temporary appointment is December 31, 2006, unless extended by the Department based on demonstrated need in Jefferson or Chambers counties. Subsection (m) provides that temporary appointees will be subject to the provisions of the Department's current §5.4604, relating to the appointment of engineers as qualified inspectors, including oversight by the Department, and will also be subject to the emergency cease and desist provisions of the Insurance Code Chapter 83. Subsection (n) contains a severability clause which provides for the continuation of non-affected provisions of the rules if any provisions are declared invalid.

Comment: One commenter stated support for the rule.

Agency Response: The Department appreciates the commenter's support for the rule.

For: Office of Public Insurance Counsel.

The new section is adopted pursuant to the Insurance Code Article 21.49 §6A and §36.001. Article 21.49 §6A provides that a windstorm inspection may only be performed by a qualified inspector who must be approved and appointed or employed by the Department to perform building inspections. Section 6A also provides that a qualified inspector includes a person determined by the Department to be qualified to perform building inspections because of training or experience and an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc. (all now known as the International Code Council) who has certifications as a buildings inspector and coastal construction inspector and who also complies with other requirements specified by rule by the Commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2006.

TRD-200601301

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 21, 2006

Proposal publication date: January 20, 2006

For further information, please call: (512) 463-6327

◆ ◆ ◆

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE

SUBCHAPTER X. WASTE PROCESSES AND REMEDIATION

30 TAC §106.534

The Texas Commission on Environmental Quality (commission) adopts the amendment to §106.534 *with change* to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5539).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission adopts the amendment to §106.534, Municipal Solid Waste Landfills and Transfer Stations, to state the specific activities that are permitted under the section. Those activities are cell construction, waste disposal, and waste transfer. The previous rule language stated that municipal solid waste landfills (MSWLFs) and waste transfer stations operating in compliance with the Texas Solid Waste Disposal Act are permitted by rule. This language may have been misleading to landfill owners and operators and the general public because it implied that any and all activities at a landfill are permitted by this rule. The only facility authorized under the permit by rule, however, is the landfill itself. The commission adopted eligibility criteria for authorization under §106.534 in order to clarify the scope of activities and landfill size that will maintain emissions to an insignificant level for purposes of meeting statutory requirements of Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.05196. Some landfill sites may also conduct various activities that would require separate authorizations.

Air dispersion models were used to estimate the downwind concentration of pollutants emitted from landfills and transfer stations. The models' predictions are conservative, based on the general assumptions used to develop the model as well as the engineering assumptions used to determine emission rates. In addition, it is generally assumed that all sources emit pollutants simultaneously at maximum rates, and during worst-case meteorological conditions. These assumptions are not expected to occur in actual operation of the sources modeled. The modeling for this permit by rule was conducted to evaluate the worst-case operating scenarios for a landfill that is larger in size than a landfill that could be authorized under the revised permit by rule. Pollutants evaluated included particulate matter (PM) and volatile organic compounds (VOCs), and the commission determined that the PM and VOC emissions from a landfill authorized under §106.534 would be less than or equal to the emissions used in the modeling demonstration. Therefore, the emissions from landfills being permitted by this rule would be protective of human health and the environment. Emissions from roads were not evaluated because they are not considered a facility as defined in TCAA, §382.003(6). Maintenance, startup, or shutdown emissions from the landfill or transfer station activities are included under this permit by rule but these emissions are minimal and not significantly different than emissions from normal operations.

In a separate action, the commission also adopted a new air standard permit in 30 TAC Chapter 330, Subchapter U, Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations for MSWLFs receiving nonhazardous waste. The subchapter includes various facilities commonly found at landfill and waste transfer sites and is intended for use by larger MSWLFs with more extensive support activities.

SECTION DISCUSSION

§106.534. Municipal Solid Waste Landfills and Transfer Stations.

The amendment specifies that landfill cell construction and waste disposal activities at transfer stations of the types specified may be authorized under this section. Landfill cell construction activities may include unloading, spreading, or compacting of waste and applying as daily, immediate, or final cover. The commission is adding a reference to 40 Code of Federal Regulations (CFR) §60.751 to specify the meaning of the definition of landfill cell construction or modification to prevent confusion with the term "construction or modification" as it is used in other definitions applicable to air contaminants. This permit by rule does not limit the type of landfill authorized if it complies with the Texas Solid Waste Disposal Act. Reference to the Texas Solid Waste Disposal Act was removed from this section because it included the authorization of industrial landfills, in addition to other waste operations such as bioreactors. This proposed amendment limits the type of landfill to which the permit by rule is applicable in order to exclude industrial landfills and bioreactors.

Use of permits by rule are limited by TCAA, §382.05196, to those facilities that would make an insignificant contribution of air contaminants to the atmosphere. The new §106.534(1) specifies when sites having facilities other than landfill cell construction and waste disposal would not qualify for the permit by rule, and therefore, must meet the conditions of the concurrently adopted Chapter 330, Subchapter U, or apply for a permit under Chapter 116. This would include new or modified landfills and transfer stations that do not meet the requirements of this permit by rule authorization. Some examples of types of facilities common at landfills that are not included in this rule are engines and storage tanks. In response to public comment, the commission removed the proposed 25-ton restriction on daily waste acceptance. Landfills with other facilities located on site must still get authorization for those facilities either through other permits by rule or through use of the air standard permit in Chapter 330, Subchapter U.

Adopted §106.534(2) requires that the site owner or operator obtain a valid permit or registration under §330.7, Permit Required, when claiming this authorization to ensure compliance with the commission's solid waste regulations.

Adopted §106.534(3) requires that the site have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume. This restriction will apply to landfills that are new or modified after the effective date of this rule.

Adopted §106.534(4) requires that the site have a non-methane organic compound (NMOC) emission rate of less than 50 Mg per year (Mg/yr). This emission rate was selected based on the requirements in 40 CFR Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills. A landfill that is subject to 40 CFR Part 60, Subpart WWW and has an NMOC emission rate equal to or greater than 50 Mg/yr, must have a gas collection and control system preapproved and installed. The permit by rule authorization is intended to be used by those landfills that are small enough not to generate the amount of landfill gas that requires a gas collection and control system. In order to evaluate a worst-case scenario for landfill and transfer station fugitive gas emissions, an air quality dispersion modeling analysis was performed to evaluate the effect based on the 50 Mg/yr NMOC emission rate. The air quality dispersion modeling as-

sumed the nature and characteristic for the transfer stations and landfills fugitive emissions where identical, which is an overly conservative approach. Upon the evaluation of the modeling results, the commission concluded that the MSWLF and transfer station emissions are protective of human health and the environment, and that these uncontrolled emissions did not jeopardize public health and welfare.

Adopted §106.534(5) requires that the emissions from the entire site do not exceed 25 tons per year of VOCs and PM. Air dispersion modeling was performed to verify that these limits are protective of human health and the environment.

Adopted §106.534(6) states that visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by United States Environmental Protection Agency (EPA) Test Method 22. This opacity limit constitutes a reasonable measure of best available control technology standards of the air permits program and should minimize the potential for dust nuisances.

Adopted §106.534(7) authorizes stand-alone transfer stations located at sites other than an MSWLF and requires compliance with the Texas Solid Waste Disposal Act. In response to public comment and after analysis of additional material concerning transfer stations, the commission concluded that the proposed 165-foot setback distance was not justified. Instead of the setback distance, the commission will require transfer stations holding waste overnight be covered by a building with a vertical exhaust at least 16 feet above ground level and with 45,000 cubic feet per minute ventilation capacity.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendment does not meet the definition of a "major environmental rule" as defined in that statute. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this rulemaking is to resolve the misinterpretation that the current permit by rule language authorizes all activities at an MSWLF or transfer station when in fact various activities beyond cell construction require separate authorizations. The amendment to §106.534 does not meet the definition of "major environmental rule" because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The purpose of the amendment is to detail precisely what activities are authorized under this section. The previous rule language caused confusion among landfill operators and the general public as to what activities are authorized. The rulemaking is prospective and would neither affect facilities currently claiming the existing permit by rule, nor prevent landfills or transfer facilities from obtaining the necessary authorizations to construct.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendment does not meet any of the four applicability requirements. Specifically, the amendment implements the requirements of THSC, TCAA, §382.05196, regarding Permits by Rule.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking and performed an assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. This rulemaking amends §106.534 so that only cell construction and waste disposal activities are authorized under this section. The purpose of the amendment is to detail precisely what activities are authorized under this section. The previous rule language caused confusion among landfill operators and the general public as to what activities are, or are not, authorized. Landfill owners and the general public will benefit from clearer rule language that specifies the requirements for landfill and transfer station operations that use this section to authorize air emissions. These requirements are established in order to protect public health and welfare from air emissions from these types of facilities. Landfill facilities that have activities other than cell construction and waste disposal, and transfer stations that cannot meet the setback requirements of the amended section, would not be precluded from obtaining an air quality permit through other authorizations. The amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. The amendment does not add a requirement for an air authorization for landfills and transfer stations that did not exist previously. Therefore, the amendment to Chapter 106 would not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants are authorized and the revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40

CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §106.534 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised §106.534 requirement for each landfill or transfer station affected by the revisions at their site.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin on September 29, 2005. During the public comment period that closed on October 31, 2005, the commission received comments from Houston Regional Group of the Sierra Club (HSC), Waste Management Texas (WMTX), Allied Waste Management (Allied), Russell, Moorman, and Rodriguez, LLP (RMR), and the Lone Star Chapter of the Solid Waste Association of North America (TxWANA). All of the commenters opposed the proposed amendment to §106.534.

RESPONSE TO COMMENTS

HSC commented that there is no mention of odorous compounds originating at small landfills or transfer stations in the list of compounds analyzed for their effect on public health. The commenter stated that "Odorous compounds should be examined specifically by this PBR analysis to ensure that their emission does not cause a nuisance condition," because HSC further states that ". . . odorous compounds can cause a person to become sick or jeopardize his/her public health and welfare." The commenter also stated that the 165-foot setback applicable to transfer stations could not be enough when considering the effect of these compounds.

The commission received additional information from stakeholders on transfer stations not located at MSWLFs after the public comment period closed for the proposed rules. That information was sufficient for the commission to conduct its evaluation. The commission analyzed compounds for nuisance conditions, as well as for protection of public health and welfare. Specifically, the commission reviewed three odorous compounds from Table 2.4.1, *Default Concentration for Landfill Gas Constituents*, in the EPA guidance document AP-42 Fifth Edition, Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources. These compounds evaluated were dimethyl sulfate, ethyl mercaptan, and methyl mercaptan, which are common odor producing compounds, and the commission determined that the standard permit is protective of public health and welfare. Air dispersion modeling indicated that these three compounds presented no problems, with regard to odor, at the property line for transfer stations that retain 1,000 tons or less of municipal solid waste overnight. Transfer stations retaining over 1,000 tons overnight will be required to have the waste holding area covered by a ventilated building.

HSC prefers that visible emissions limitations from transfer stations be limited to a cumulative 30 seconds over a two-hour pe-

riod instead of the proposed 30-second accumulation in six minutes.

The commission is not changing the rule in response to this comment. The 30 seconds in six-minute standard is an accepted standard used in other authorizations for sources of PM.

Allied and WMTX commented that the commission should remove the setback requirement for stand-alone transfer stations. They stated that modeling based on fugitive emissions similar to landfills is overly conservative, assuming the volume of waste at a small landfill and a transfer station is comparable. The magnitude of waste at a small landfill is magnitudes greater. Allied provided additional data for modeling input. TxWANA agreed that the modeling was overly conservative. TxWANA sought clarification as to whether a "receptor" is an off-property receptor.

The commission examined additional material concerning the volume of material being moved through transfer stations as compared to landfill material volumes and concluded that the setback distance was not required for protection of public health. Waste holding areas that store waste overnight will be required to be covered by a ventilated building. A receptor refers to individuals, structures, and public areas not owned by the landfill operator.

Allied and RMR commented that the applicability of §106.534 should be expanded to cover landfills accepting more than 25 tons of waste per day. This restriction and the lack of authorization of ancillary activities limits the usefulness of the permit by rule. Allied stated that it is not aware of any landfills accepting such a low volume of waste.

The commission agrees with Allied's assessment of the limited usefulness of the permit by rule as proposed and removed the 25 tons of waste per day restriction. The use of the permit by rule will still be restricted based on the landfill design capacity of 2.5 million megagrams or 2.5 million cubic meters.

Allied recommended that proposed §106.534 should be expanded to authorize closed landfills.

The commission recognizes that closed landfills may still have a valid permit under §330.7, Permit Required, and landfill closure does not prevent claiming this permit by rule.

STATUTORY AUTHORITY

The amendment is adopted under THSC, §382.011, which authorizes the commission to administer the requirements of the TCAA; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.057, which authorizes the commission to exempt from permitting, changes within any facility that would not make a significant contribution of air contaminants to the atmosphere; THSC, §382.051, which authorizes the commission to issue permits for construction of facilities that emit air contaminants; and THSC, §382.05196, which authorizes the commission to adopt permits by rule for types of facilities that will not make a significant contribution of air contaminants to the atmosphere.

The adopted amendment implements THSC, §§382.011, 382.017, 382.057, 382.051, and 382.05196.

§106.534. Municipal Solid Waste Landfills and Transfer Stations.

Municipal solid waste landfill (MSWLF) cell construction or modification, as defined in 40 Code of Federal Regulations (CFR) §60.751, of MSWLF Type I, Type I-AE, Type II, Type III, Type IV, Type IV-AE, and Type V transfer stations as defined in §330.5 of this title (relating to

Classification of Municipal Solid Waste Facilities) that meet the conditions listed in this section are permitted by rule.

(1) The following are not authorized by this section:

(A) MSWLF sites that have facilities other than cell construction and waste disposal; or

(B) maintenance, startup, shutdown, or emission excursions under Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(2) The owner or operator must have obtained a valid permit or registration under §330.7 of this title (relating to Permit Required), for the site.

(3) The MSWLF or transfer station must have a design capacity of less than 2.5 million megagrams (Mg) by mass or 2.5 million cubic meters by volume.

(4) The MSWLF or transfer station must have a non-methane organic compound emission rate of less than 50 Mg per year as determined by United States Environmental Protection Agency (EPA) publication AP-42, Compilation of Air Pollutant Emission Factors.

(5) Emissions from the site are limited to 25 tons per year of volatile organic compounds or particulate matter. There are no short-term limitations for particulate matter and volatile organic compounds.

(6) Visible emissions from the site must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by EPA Test Method 22, as found in 40 CFR Part 60, Appendix A.

(7) Transfer stations not located at an MSWLF site shall:

(A) operate in compliance with the Texas Solid Waste Disposal Act, and;

(B) be required to have the waste holding area covered by a ventilated building that has a minimum vertical exhaust vent located at least 16 feet above ground level with a capacity of 45,000 cubic feet per minute, if the facility retains over 1,000 tons of waste overnight.

(8) Facilities shall comply with applicable requirements of all federal regulations and state rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2006.

TRD-200601383

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Effective date: March 23, 2006

Proposal publication date: September 9, 2005

For further information, please call: (512) 239-5017



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.24

The Texas Department of Public Safety adopts amendments to §15.24, concerning Identification of Applicants, without changes to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7852).

Adoption of the amendments is necessary due to the passage of House Bill 967 during the 79th Legislature, Regular Session. House Bill 967 amended Texas Transportation Code, §521.142 and §522.021 to require the department to accept an offender identification card or similar form of identification issued to an inmate by the Texas Department of Criminal Justice (TDCJ) as satisfactory proof of identity for the issuance of a driver license, commercial driver license or identification certificate.

In the United States, the driver license is the preferred form of personal identification for an overwhelming majority of the population. It is utilized to conduct virtually all types of business transactions as well as to travel. Businesses, government agencies and law enforcement personnel rely on the accuracy of the information contained in the driver license and many times do not have the opportunity or authority to require additional proof of a person's identity.

As reliance on the driver license for identification purposes has expanded, it has become increasingly susceptible to use in the commission of fraud and other criminal activity. The department must continue to take all reasonable steps to ensure the integrity of the driver license and the agency has limited the type of documentation acceptable as proof of identity to items that can be verified by the issuing entity.

According to TDCJ, the offender identification card was initially designed for internal use during the person's incarceration and the identifying information on the card is based solely on the judgment record received from the convicting court. However, the judgment record may not always be accurate and could contain aliases, incomplete names and/or incorrect dates of birth. TDCJ does not utilize other sources to verify or update the identification information, as the document was never intended for external use. It is not anticipated that TDCJ will modify its existing procedures in order to improve the accuracy of the card. As such, the department has determined that it is appropriate to categorize the offender identification card as supporting identification.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work, and Texas Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601408

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: March 26, 2006
Proposal publication date: November 25, 2005
For further information, please call: (512) 424-2135



CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

37 TAC §§19.1 - 19.7

The Texas Department of Public Safety adopts the repeal of §§19.1 - 19.7, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5729).

Repeal of the sections is necessary due to substantial revisions having been made. Adoption of the repeal is filed simultaneously with the adoption of new §§19.1-19.7 which will simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §724.016.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601414
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: March 26, 2006
Proposal publication date: September 9, 2005
For further information, please call: (512) 424-2135



37 TAC §§19.1 - 19.7

The Texas Department of Public Safety adopts new §§19.1 - 19.7, concerning Breath Alcohol Testing Regulations. §§19.4 - 19.7 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5729) and will be republished. §§19.1 - 19.3 are adopted without changes and will not be republished. The repeals of existing §§19.1 - 19.7, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

Adoption of the new sections is necessary in order to bring 37 TAC §§19.1 - 19.7 in line with accepted standards for drafting administrative rules and to simplify and clarify language for ease

of reading and understanding of the Breath Alcohol Testing Regulations.

New §19.1 provides for definitions for the proposed rules. New §19.2 outlines the guidelines for certification of instruments by the scientific director. New §19.3 allows the scientific director the flexibility to incorporate evolving technology into testing methodology when deemed appropriate. New §19.4 adds language streamlining the business process used to insure breath testing is conducted in accordance with the methods approved by the scientific director. New §19.5 addresses the various aspects of certification provisions. Additionally, a deficiency in the renewal of certification process created by a previous revision was addressed to establish consistency with other operator certification standards. New §19.6 addresses various aspects of certification provisions. A provision for expiration of certification as well as renewal and recertification was added. New §19.7 also addresses various aspects of certification provisions. Course curriculum is clarified to more closely agree with modern training methods.

The department accepted comment on the proposed rules through October 9, 2005. Written comments were submitted by Rafe Harshberger, a retired Abilene Police Department Sergeant and currently certified Technical Supervisor. The department also received correspondence both telephonically and in person from several Technical Supervisors.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: The notice bars certification as an operator or technical supervisor for individuals with certain conviction histories. The commenter points out that individuals seeking such certification should be held to the same standards as those seeking TCLEOSE certification as a peace officer.

RESPONSE: The department agrees with the comment and has amended language in §19.5(a)(2) and §19.6(b)(6) dealing with conviction history of individuals seeking certification as an operator or technical supervisor to more closely agree with that of TCLEOSE standards for peace officer certification.

COMMENT: 19.6(b)(5) and 19.6(c)(2) reference "certified program" and "certified school of instruction" whereas elsewhere in the title the reference is "approved program" or "approved school of instruction".

RESPONSE: The department agrees with the comment and has amended language in 19.6(b)(5) and 19.6(c)(2) to make it consistent with the remainder of the title.

COMMENT: 19.6(a)(5) references "testing location" whereas 19.1(22) in the definitions refers to "site location" as the physical site of the breath testing equipment.

RESPONSE: The department agrees with the comment and offers amended language in 19.6(a)(5) to agree with that in 19.1(22).

COMMENT: 19.4(b) references "an agency or laboratory" and subsequent references to the same entity within 19.4 reference only "an agency".

RESPONSE: The department agrees with the comment and offers amended language in 19.4 to create consistency for each reference to "an agency or laboratory".

COMMENT: The proposed revision to 37 TAC 19.1- 19.7 lacks a preservation clause which was contained in the current title 19.7 Explanation of Terms and Actions

RESPONSE: The department agrees with the comment and is simultaneously adopting new §19.8 which it proposed in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8827). New §19.8 offers the necessary language which was inadvertently omitted.

COMMENT: 19.6(c)(1) refers to examination for renewal of certification as a technical supervisor while 19.6(e) grants the scientific director the authority to determine requirements for renewal of certification.

RESPONSE: The department agrees the wording creates an ambiguity and deletes the phrase "or until the next examination for renewal" from 19.6(c)(1).

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §724.016, which authorizes the department to adopt rules regarding breath specimen analytical methods and qualifications of individuals performing the analyses.

§19.4. Approval of Techniques, Methods And Programs.

(a) All breath alcohol testing techniques, methods and programs to be used for evidential purposes must have the approval of the scientific director.

(b) Prior to initiating a breath alcohol testing program, an agency or laboratory shall submit an application to the scientific director for approval. If the scientific director deems it appropriate, an on-site inspection may be made by the scientific director or a designated representative to assure compliance with the provisions of the application. An agency or laboratory applying for approval of a breath alcohol testing program must agree to:

(1) conduct such analyses only for the purposes stated in subsection (c)(8) of this section;

(2) allow access for inspection under subsection (d) of this section; and

(3) comply with subsection (f) of this section.

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) a period during which an operator is required to remain in the presence of the subject. An operator shall remain in the presence of the subject at least 15 minutes before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is not necessary to ensure the validity or accuracy of the test result;

(2) the breath alcohol testing instrument and reference sample device must be operated by either a certified operator or technical supervisor and only certified personnel will have access to the instrument;

(3) the use of a system blank analysis in conjunction with the testing of each subject;

(4) the analysis of a reference sample, the results of which must agree with the reference sample predicted value within plus or minus 0.01g/210 L, or such limits as set by the scientific director. This reference analysis shall be performed in conjunction with subject analyses;

(5) all analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210 L);

(6) maintenance of any specified records designated by the scientific director;

(7) supervision of certified operators and testing techniques by a technical supervisor meeting the qualifications set forth in §19.6 of this title (relating to Technical Supervisor Certification);

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of violating any statute or rule that defines intoxication in terms of alcohol concentration; and

(B) in compliance with §19.5(b), (c), and (e) of this title (relating to Operator Certification).

(d) The scientific director or a designated representative may at any time make an inspection of the approved breath alcohol testing agency or laboratory to ensure compliance with these regulations.

(e) Upon proof of compliance with subsections (a) - (c) of this section, approval will be granted by the scientific director.

(f) Approval of any breath alcohol testing program is contingent upon the applying agency or laboratory's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the scientific director regarding any aspect of the breath alcohol testing program; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) data, records and forms;

(4) site location and security;

(5) certified evidential instruments should not ordinarily be used for public information programs and dissemination of any such information should be carried out by a certified technical supervisor;

(6) methods of operations and testing techniques;

(7) instruments and reference sample devices;

(8) purposes for which testing is conducted;

(9) operators and technical supervision of operators.

(g) Approval of a breath alcohol testing program may be denied or withdrawn by the scientific director if, based on information obtained by the scientific director, a designated representative of the scientific director, or a technical supervisor, the approved agency or laboratory fails to meet all criteria stated in this section.

(h) Technical supervisors, when required, shall provide expert testimony by direct testimony or by written affidavit concerning the approval of techniques, methods and programs under their supervision.

§19.5. Operator Certification.

(a) Certification.

(1) Prior to certification an applicant must establish proof of participation in a breath test program meeting the requirements set forth in §19.4 of this title (relating to Approval of Techniques, Methods, and Programs).

(2) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified operator;

(B) persons convicted of a Class B misdemeanor within the last ten years shall not be eligible to be a certified operator;

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code within the last ten years shall not be eligible to be a certified operator.

(3) Prior to initial certification as a breath test operator an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.7 of this title (relating to Approval of Courses of Instruction).

(4) Prior to certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete examinations, prepared and given by the scientific director or a designated representative, which shall include the following:

(A) a written examination;

(B) a practical examination establishing proficiency in the operation of the instrument and reference sample device on which the operator is to be certified and the proper completion of all required reports and records. The practical examination will involve the completion of simulated subject analyses and/or practice test(s). If the simulated subject analyses and/or practice tests are not completed correctly and/or there are one or more errors in the reports or records the applicant will be offered a second set of simulated subject analyses. Any error(s) in the second set of analyses will result in a failure of the practical examination;

(C) failure of the written and/or practical examination will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath testing operator.

(5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.

(6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(b) Renewal of current certification. In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) A practical examination in accordance with subsection (a)(4)(B) of this section establishing proficiency of the operator in the operation of the instrument and reference sample device on which the operator is certified and the proper completion of all required reports and records. The operator will be evaluated on the basis of ability to:

(A) use proper techniques;

(B) follow established procedures including, but not limited to, the operation of the instrument and reference sample device and the proper reporting procedures for analysis results;

(2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;

(B) a detailed review of the breath alcohol analysis and reporting procedures;

(C) a discussion of procedural updates resulting from recent court decisions and legislation;

(D) a discussion of current issues in the field of breath alcohol testing;

(E) a written examination

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to follow established procedures;

(B) uses other than proper technique;

(C) fails the practical examination; or

(D) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator's certificate valid for a period of time designated by the scientific director or until next renewal unless inactivated or suspended.

(c) Proficiency requirements.

(1) The scientific director or a designated representative or the operator's technical supervisor may at any time require an operator to demonstrate proficiency and ability to properly operate the instrument and reference sample device.

(2) It is the responsibility of the individual operator to maintain proficiency.

(3) Failure to pass a proficiency test will result in the suspension of the operator's certification for 30 days.

(d) Certification inactivation and suspension.

(1) Inactivation may be initiated by the certified operator in case of voluntary surrender of certification or by anyone having authority to suspend. The technical supervisor or operator shall, without delay, notify the office of the scientific director of any such inactivation. Challenges to involuntary inactivation will be resolved at the discretion of the scientific director. Inactivation will be utilized in, but not limited to the following situations:

(A) an operator transfers to a position where certification as a breath test operator is no longer desired;

(B) an operator fails to renew certification prior to its expiration;

(C) an operator terminates employment under which certification was acquired;

(D) administrative program control to safeguard the scientific integrity of the breath alcohol testing program.

(2) Suspension of certification will be utilized when the scientific director and/or a technical supervisor determines an operator intentionally or purposefully disregards or violates these regulations, or commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification, or for malfeasance or noncompliance

with any provision of these regulations, or when in the technical supervisor's judgment the operator's performance is unreliable or the operator is incompetent.

(A) The technical supervisor shall, without delay, notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.

(B) Upon receipt of the notification of suspension, the scientific director shall initiate, if not previously completed, an inquiry culminating in sustaining the suspension, or setting aside the suspension.

(C) The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.

(D) Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in this title.

(3) An operator whose certification has been suspended may appeal such action in writing to the director, Texas Department of Public Safety, who will determine if the action of the scientific director will be affirmed or set aside. The director may reinstate the certification under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification.

(1) Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. It will be the responsibility of the inactivated or suspended operator to notify the scientific director in writing of such intent. Recertification shall take place pursuant to the following:

(A) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(B) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

(C) recertification after an inactivation or suspension period of greater than five years the operator must attend and satisfactorily complete the initial course of instruction for certification of a breath test operator pursuant to subsection (a) of this section.

(D) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, pursuant to subsection (a)(6) of this section.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall provide direct testimony or by written affidavit verifying all aspects of certification of operators within an assigned area.

§19.6. Technical Supervisor Certification.

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program

and to assure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records and operator's compliance with the provisions stated in these regulations;

(2) supervision of certified instrumentation, reference sample devices and affiliated equipment in an assigned area;

(3) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices in an assigned area;

(4) supervision of techniques of testing, maintaining scientific integrity and upholding these regulations as they apply to the certification of a total testing program;

(5) selection and supervision of a site location as it applies to security and technical suitability for testing;

(6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(7) all technical, administrative and regulatory aspects of breath alcohol testing within a designated area; and

(8) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.

(b) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (For the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level.);

(2) satisfactory completion of a course of instruction as set forth in §19.5(a)(3) of this title (relating to Operator Certification);

(3) satisfactory completion of technical supervisor training that is approved by the scientific director, the content of which shall include, but not be limited to:

(A) advanced survey of current information concerning alcohol and its effects on the human body;

(B) operational principles and theories applicable to the program;

(C) instrument operations, maintenance, repair and calibration;

(D) legal aspects of breath alcohol analysis;

(E) principles of instruction;

(4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and reference sample device;

(5) prior to receiving certification, a technical supervisor candidate must establish proof of engagement in an approved program

or a certified school of instruction or proof of pending engagement upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish proof of being actively engaged in an approved program or approved school of instruction, certification will, at the discretion of the scientific director, be denied or inactivated;

(6) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified technical supervisor;

(B) persons convicted of a Class B misdemeanor within the last ten years shall not be eligible to be a certified technical supervisor;

(C) persons receiving a driver license suspension for refusal to submit to a chemical test as per the provisions of Chapter 724 or Chapter 522, Texas Transportation Code, within the last ten years shall not be eligible to be a certified technical supervisor.

(c) Certification.

(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (b) of this section has been met, the scientific director will issue certification that will be valid for a period of time designated by the scientific director unless inactivated or suspended.

(2) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer actively engaged in an approved program or certified school of instruction.

(3) Technical supervisor certification may be suspended only by the scientific director for malfeasance, falsely or deceitfully obtaining certification or failure to carry out the responsibilities set forth in this title.

(4) A technical supervisor whose certification has been suspended may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(d) Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

(e) Renewal of current certification and recertification. In order to maintain current certification, the Technical Supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.

§19.7. Approval of Courses of Instruction.

(a) Any agency, laboratory, institution, school or college intending to offer a course of instruction for certified operators of evidential breath alcohol testing instruments, must have the course curriculum approved by the scientific director.

(b) The operator course must utilize the most current revision of the Texas Breath Alcohol Testing Program Operator Manual as the primary instructional text and contain, as a minimum, the following hours and areas of instruction:

(1) three hours of instruction on the effects of alcohol on the human body;

(2) three hours of instruction on the operational principles of the breath alcohol testing instrument to be used. This instruction shall include:

(A) a functional description of the testing method; and

(B) a detailed operational description of the method with demonstrations;

(3) five hours of instruction on Texas legal aspects of breath alcohol testing;

(4) three hours of instruction on supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;

(5) 10 hours of participation in a laboratory setting operating the breath testing equipment. Laboratory practice will include the analysis of reference samples, as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation;

(6) examination time (approximately three hours) which will be considered part of the course.

(c) Each course of instruction shall be coordinated by or under the general direction or supervision of a certified technical supervisor.

(d) All courses of instruction will be open to the scientific director or designated representative for inspection thereof.

(e) Upon satisfactory proof of compliance of subsections (a) - (d) of this section to the scientific director, the scientific director will approve the course of instruction and its participants will be eligible to apply for operator certification.

(f) Prior to commencing the course it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of examinations.

(g) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the course of instruction coordinator(s) to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.

(h) Examinations for operator certification after completion of a course will be in accordance with §19.5(a)(4) of this title (relating to Operator Certification).

(i) Failure to maintain the provisions stated in this section will be cause for the scientific director to rescind approval of a course of instruction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601415

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 26, 2006

Proposal publication date: September 9, 2005

For further information, please call: (512) 424-2135

◆ ◆ ◆

37 TAC §19.8

The Texas Department of Public Safety adopts new §19.8, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8827).

In the September 9, 2005, issue of the *Texas Register* (30 TexReg 5729) the department proposed the repeal and concurrent adoption of new §§19.1 - 19.7 in order to bring the rules in line with accepted standards for drafting administrative rules and to simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations. In doing so, the department inadvertently left out a necessary preservation clause which was contained in the rules. The adoption of new §19.8 is necessary in order to offer the necessary language which was inadvertently omitted.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §724.016, which authorizes the department to adopt rules regarding breath specimen analytical methods and qualifications of individuals performing the analyses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.

TRD-200601416

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 26, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 424-2135



SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety adopts amendments to §§19.21 - 19.29, concerning Texas Ignition Interlock Device Regulations. Sections 19.21 - 19.25 and 19.27 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5735) and will be republished. Sections 19.26, 19.28, and 19.29 are adopted without changes and will not be republished.

Adoption of the amendments is necessary in order to have all explanations of terms and actions in §19.21 displayed in like style. Presently many of the definitions are entirely too informational and procedural. Therefore, the excessive substantive wording in those definitions was removed and relocated to the appropriate location(s) in the remainder of the sections. Additional concerns since the last amendment of these regulations have also prompted amendments to be incorporated, which will clarify and/or make more flexible the department's position on certain issues.

The amendment to §19.22 increases the device approval processing fee from fifty (\$50) dollars to five hundred (\$500) dollars due to the prolonged and complex evaluation procedures necessary to ensure the device meets the technical requirements of these regulations. The section is also amended to limit the number of devices a manufacturer may have on the approved list in order to increase the effectiveness of the department's oversight of the industry and to encourage the most updated technology in device design.

The amendment to §19.23 addresses the issue of only one rolling retest violation (for failure to deliver it) being recorded even if the vehicle was driven for an extended period of time after the initial failure to deliver the rolling retest sample. The issue was addressed by requiring subsequent retests at required intervals and recording violations until the test is delivered or the engine is turned off.

The amendment to §19.24 requires the service center and the ignition interlock device to be utilizing the latest version of the manufacturer's software and to notify the department of software changes. In addition, the amendment requires the manufacturer as well as the service center to maintain customer records and make same available upon request.

The amendment to §19.25 clarifies the definition of calibration confirmation test and requires the vendor's software be capable of performing, documenting and reporting the result of this test. The amendment also clarifies the protocol to be followed should a service center go out of business.

The amendment to §19.26 outlines the specific protocol wherein a manufacturer could appeal the denial or withdrawal of approval of a device. Current wording only speaks to the fact that denial or withdrawal of approval can be appealed, and no protocol is specified.

The amendment to §19.27 requires a designated waiting area so that a customer cannot witness the installation of the device. The department is requiring the vendor software to document the representative performing the monitor check and when it is performed. A major revision added to this section addresses device removal. The amendment further establishes the specific protocol by which the service center could appeal the denial, suspension or revocation of certification.

The amendment to §19.28 gives the inspector the right to require a service representative to demonstrate competency to perform any/all aspects of their job responsibilities that are required by regulation. Also established in this section is the specific protocol by which the service representative can appeal the denial or suspension of certification.

The amendment to §19.29 established the specific protocol by which an inspector can appeal the denial or suspension of certification.

The department accepted comment on the proposed rules through October 9, 2005. Written comments were submitted by Richard Freund representing Lifesaver Interlock, Inc.; Scott Elting representing Draeger Safety Diagnostics, Inc.; Jim Ballard representing Smart Start; and Andi Haa representing Guardian Interlock.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §19.21(27). Andi Haa comments "Martin, this one concerns me. I believe we need to provide two def-

initions: One would be for a Temporary Lockout and the other Permanent Lockout." In addition, Ms. Haa also suggested additional minor changes to §19.21 definitions.

DEPARTMENT RESPONSE: The department agrees. This term will be deleted and we will have separate definitions for temporary and permanent lockout. This will cause a renumbering of the definitions. In addition, the department agrees with Ms. Haa and has made additional nonsubstantive changes to the definitions section for clarification purposes.

COMMENT: Regarding §19.25(e). Ms. Haa states "Martin, it really seems this discussion would be better placed in a different section."

DEPARTMENT RESPONSE: The department agrees with the comment. Therefore, 19.25(e) is deleted and moved to 19.27(h). Accordingly, the current 19.27(h) now becomes 19.27(i), the current 19.27(i) becomes 19.27(j), and the current 19.27(j) becomes 19.27(k).

COMMENT: Regarding §19.23(f). Refusal of any rolling retest requested after sufficient time as determined by the department shall result in a violation being recorded in the data storage system and cause the IID to continue to request a rolling retest or to request a subsequent rolling retest at least every ten minutes until a test is recorded and passed or the engine turned off. Continued refusals shall result in additional violations being recorded in the data storage system or documented in any report generated from the data storage system whenever a Violation Reset occurs.

"I believe the additional language allows the spirit of what the department has expressed it's concern about a loophole that it wants to close; it wants appropriate jurisdictional authorities to be made fully aware and notified if an individual continues to operate or idle a vehicle for significant lengths of time after ignoring a rolling retest and that sanctions are still imposed to thwart such evasion. Additionally, as jurisdictions have adopted use of interlock and the technology has advanced the trend is to allow users fewer not more violations before a violation reset. The technology can now also be customized to trigger a violation reset for specific types and numbers of violations. And lastly, as the efficacy and importance of the rolling retest and the ease of passing the retest has been clearly demonstrated the refusal or failure to pass the retest is viewed by jurisdictions primarily as offender non-compliance and a training issue at worst. Early Recall for additional instruction or to push the offender into compliance is not viewed as a significant and unwarranted intervention via the public safety issues of allowing repeat DUI offenders the opportunity to flout the IID and drive intoxicated and unsafely."

DEPARTMENT RESPONSE: Since different vendors have different protocol in the way they handle the refusal of the rolling retest, the revision as proposed by the department will make reporting those refusals uniform throughout the industry. Furthermore, future concepts of reporting cumulative numbers of violations would be compromised if this revision was not implemented as proposed. Although some vendors may have to implement varying degrees of software/firmware changes to accomplish this revision, sufficient time will be allowed by the department for all vendors to satisfactorily comply.

We do make a change in one sentence in §19.23(f) which results in another sentence being added.

Current wording: Refusal of any rolling retest requested after a sufficient time as determined by the department shall result in a

violation being recorded in the data storage system and cause the IID to request a subsequent rolling retest at least every 10 minutes until a test is recorded or the engine is turned off.

New wording: Refusal of any rolling retest shall result in a violation being recorded in the data storage system. After recording the violation, the IID shall immediately request another rolling retest.

COMMENT: Regarding §19.24(b)(4). The device and the service center shall utilize the most current version of the manufacturer's software and firmware to ensure compliance with these regulations. The manufacturer's software and firmware shall not allow a certified service representative or service center to disengage or modify the technical and operating features of a device in such a way as to not uphold the scientific integrity of the device to which it is certified and approved under these regulations, as determined by the department. A reasonable time as determined by the department will be granted if changes to these regulations require manufacturers to upgrade and/or revise their software and/or firmware.

"This is an outstanding issue in many jurisdictions being practiced by a few interlock manufacturers and actually to the point of being marketed by them to the offenders who want to keep drinking and driving as a competitive advantage to the disadvantage of IID providers who live by and follow the rules. It amounts to complete and utter fraud and debasement for an effective interlock program. A message needs to be sent loud and clear that such behavior will no longer be tolerated in the biggest IID state."

DEPARTMENT RESPONSE: The department agrees that the additional point being made is a possibility and we insert the following verbiage in lieu of the suggested wording:

The manufacturer's software and/or firmware shall require certain settings and operational features of the device including, but not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lockout conditions. The manufacturer's software and/or firmware shall not allow modification of certain settings and operational features of the device by the service center or the service representative unless the modification is approved by the appropriate judicial authority or the department.

COMMENT: Regarding §19.28(a)(3), Mr. Freund suggested the following alternate wording: "An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of the filing of the applicant's application for certification as an IID service representative may be denied eligibility for certification, at the sole discretion of the department. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction."

"I would hope the door could be left open for the department to take into consideration an individual who may have had extenuating circumstances, made restitution or can demonstrate rehabilitation for a mistake, very bad decision or choice in their past."

DEPARTMENT RESPONSE: The department feels this rule should not be left to discretion and therefore the wording will remain intact. We feel the industry should take all necessary steps to ensure compliance with this rule prior to employment of the service representative. Therefore, no change was made to the rule based on this comment.

COMMENT: Regarding §19.27. "In regards to the proposed changes to the Ignition Interlock Device Regulations, every thing looks good to me. The only problematic area for me was section §19.27(c)(7)(C).

I believe that the responsibility of obtaining removal authorization should fall on the client for several reasons:

1. The client would be the one initiating the change so they should do the foot work on the paperwork.
2. The vendor loosing a paying client may not be motivated to do this.

Other than that, I really like this particular reg. I believe it should just be reworded slightly to:

'When a customer desires to change from one vendor to another, it shall be the responsibility of the customer to obtain removal authorization....'

DEPARTMENT RESPONSE: Since some confusion exists as to the original installing vendor's responsibility in the protocol for a customer desiring to change vendors, we changed the proposed wording of the first sentence in §19.27(c)(7)(C) to read:

When a customer desires to change from one vendor to another, it shall be the responsibility of the original installing vendor to ensure removal authorization has been issued by the appropriate judicial authority.

We feel this change in wording removes any conceived responsibility on the part of a vendor to have to be the facilitator for the customer's desire to change in the first place.

COMMENT: Regarding §19.21(18). "Smart Start strongly believes that a 'spontaneous' bypass switch is a time bomb waiting to happen. We have had much experience with such a system years ago and once the user figures out the switch is there, they use it when they are intoxicated. This allows an easy defeat of the interlock and calls the program into serious question. Please consider changing the definition to preclude a 'spontaneous' switch. By that, we mean that the user should not be able to override a device without at least calling the provider for a code to enter.

Regarding §19.21(43) suggest adding the word 'defeat' after disable to strengthen this definition.

DEPARTMENT RESPONSE: Regarding §19.21(18), the department feels every vendor's bypass protocol should be evaluated. Since this revision only addressed the substantive wording of the definition itself, and since the comment requires detailed study not yet done, we will keep the proposed wording as is and will address this issue in the future if warranted. Therefore, no change was made to the rule based on this comment. Regarding §19.21(43), the department is not opposed to adding the word "defeat" to this definition and will therefore amend the sentence.

COMMENT: Regarding §19.22(d)(3). "Smart Start understands the verbiage says that the department 'may' limit the number of devices a manufacturer has on the approved list. We discussed this at this year's annual review in Austin. I just want to reiterate that having to replace existing units to a new and improved product would be financially prohibitive. Smart Start is currently working on a new unit, unrelated to our current ssi-1000. We plan on introducing this product first in Texas but it would not make financial sense to change out the existing clients who are using our SSI-1000. I know the regulations say 'may' and not

'shall' but I wanted to make sure I had a chance to speak on the topic one more time."

DEPARTMENT RESPONSE: The department is not opposed to deleting the first sentence in §19.22(d)(3) thereby deleting any verbiage which states "the department may limit the number of devices."

COMMENT: Regarding §19.27(c)(6). "Please consider removing the requirement to notify the courts when a user, other than the interlock customer, returns the vehicle for service. This is will only provide more reports for the courts but will not strengthen the program in anyway."

DEPARTMENT RESPONSE: The department feels this is important information for the appropriate judicial authority to use as it sees fit and therefore the requirement will remain. Therefore, no change was made to the rule based on this comment.

COMMENT: Regarding §19.27(c)(7)(B) and (c)(7)(C). "By restricting a provider from removing another provider's device, you are restricting the freedom of the customer to choose and change providers. An unhappy customer should have the ability to leave a vendor and install elsewhere but the regs make that procedurally difficult and thus you have eliminated the customer's freedom of choice. This appears to limit the way that a company can compete and gain an advantage by offering superior customer service and as such, it would appear to be outside the scope of DPS. I would suggest you require the removing company to return the device to the customer, who is ultimately held responsible by the courts and the other provider. Or allow for the competing company to remove the device only after calling the competitor and arranging for an overnight mailing of the device back to the appropriate authority."

DEPARTMENT RESPONSE: Regarding (7)(B) and (C), the department disagrees with these comments. We feel the protocol outlined is necessary to protect the data, the device itself (customers/vendors might not always return devices), and proper communication between customer and appropriate judicial authority. We are in no way restricting the customer's freedom to change vendors, but rather we are outlining a necessary sequence of events for the change to take place.

COMMENT: Regarding §19.27(h)(3) and (4). "Please include a provision to notify the manufacturer AND the service provider, via a written document such as a letter or email that there is a pending suspension or that a suspension has been given. I know that you would normally do this, but I would like the regulations to require DPS to provide such notification. Without it, it is possible that a remote service provider may be suspended and they may never let the manufacturer know of the suspension which would prevent the manufacturer from dealing with the provider and correcting the issue.

DEPARTMENT RESPONSE: The department is not opposed to also notifying the manufacturer when a service center has been suspended or revoked. For clarification purposes, our prior response to another vendor comment has resulted in renumbering this section and therefore your subsection (h)(3) and (4) now becomes subsection (i)(3) and (4). Therefore, the wording in subsection (i)(3) reads "the manufacturer and appropriate judicial authority shall be notified when a service center is suspended" and the wording in subsection (i)(4) reads "the manufacturer and appropriate judicial authorities shall be notified when a service center is revoked."

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476, which requires the department to establish minimum standards for vendors of Ignition Interlock devices; and §521.247 which states the manufacturer shall reimburse the department for any cost incurred in approving the device.

§19.21. Explanation of Terms and Actions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless indicated otherwise.

- (1) Alcohol--Ethyl alcohol, also called ethanol.
- (2) Alcohol concentration--The weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.
- (3) Alveolar breath sample--The last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.
- (4) Anticircumvention feature(s)--Any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity which would cause the device not to operate as intended.
- (5) Approval--Meeting and maintaining the requirements of these regulations for approval.
- (6) Appropriate judicial authority--Court orders or personnel of the Texas judicial system including but not limited to: the court or judge ordering the installation, adult probation or parole authorities, pretrial services authorities and occupational licensing authorities.
- (7) Bogus sample--Any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the individual.
- (8) Breath alcohol analysis--The analysis of a sample of the person's expired alveolar breath to determine the alcohol concentration thereof.
- (9) Certification--Meeting and maintaining the requirements of these regulations for certification.
- (10) Certified IID inspector--An individual who meets the requirements in §19.29 of this title (relating to Ignition Interlock Device Inspector).
- (11) Certified service center--Any fixed site or mobile IID service center meeting and maintaining the requirements in §19.27 of this title (relating to Certification and Inspection of Service Centers).
- (12) Certified service representative--Any individual who has successfully completed the requirements in §19.28 of this title (relating to Service Representative and has received certification from the department to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s).
- (13) Costs--The nonrefundable original administrative fees plus any and all costs incurred by the department for testimony and/or approval, or reevaluation, of any device.
- (14) Data storage system--A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of specific reports.
- (15) Department--The unmodified word department in these regulations refers to the Texas Department of Public Safety.
- (16) Device--An ignition interlock device.
- (17) Director--The chief executive officer of the department.
- (18) Emergency bypass--An event that permits the IID-equipped vehicle to be started without the requirement of passing the breath test.
- (19) Filtered samples--Any mechanism by which there is an attempt to remove alcohol from the human breath sample.
- (20) Fixed-site service center--A certified service center that is at a permanent location.
- (21) Free restart--The ability to start the engine again, within a reasonable time as approved by the department, without completion of another breath alcohol analysis.
- (22) IID--The common abbreviation for ignition interlock device.
- (23) Ignition interlock device--A device which measures an individual's breath alcohol concentration and prevents the motor vehicle from starting if the alcohol concentration meets or exceeds the startup set point.
- (24) Illegal start--The starting of an IID-equipped vehicle without the requisite breath test having been taken and passed.
- (25) Inactivation--The voluntary or temporary discontinuance of certification.
- (26) Interlock--The mechanism which prevents a motor vehicle from starting when the breath alcohol concentration of a person meets or exceeds a preset value.
- (27) Manufacturer--The actual producer of the device.
- (28) Manufacturer's representative--An individual or entity designated by the manufacturer to act on behalf of or represent the manufacturer of a device.
- (29) Mobile service center--Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with its parent fixed site service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.
- (30) Negative result--A test result indicating that the alcohol concentration is less than the startup set point value.
- (31) Permanent lockout--A condition wherein the IID will not allow the vehicle to be started until a certified service representative completes a violation reset and restores the IID to a state that will allow the vehicle to be started.
- (32) Positive result--A test result indicating that the alcohol concentration meets or exceeds the startup set point value.
- (33) Proficiency test--A test administered by, and in the presence of, an IID inspector or designated representative of the department to establish and/or ascertain the competency of a service representative to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s).
- (34) Purge--Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.
- (35) Reference sample device--A device containing a sample of known alcohol concentration.
- (36) Renewal of certification--Meeting the requirements of these regulations for renewing certification; for example, a representative renewing current certification, or a representative or inspector renewing certification after a period of inactivation or suspension, or a

service center renewing certification after a period of inactivation, suspension or revocation.

(37) Retest set point--An alcohol concentration determined by the department, which is the same as the startup set point, at which or above, during a rolling retest, the device will record in the data storage system the high alcohol result as a violation.

(38) Revocation--The immediate cancellation of certification.

(39) Rolling retest--A randomly required test subsequent to the initial test allowing the engine to start.

(40) Rolling retest violation--The violation recorded in the data storage system when the rolling retest requirement is not met.

(41) Startup set point--An alcohol concentration determined by the department at which, or above, the device will prevent the ignition of a motor vehicle from operating. That set point shall be an alcohol concentration of 0.030 g /210 liters of breath.

(42) Suspension--The immediate cancellation or curtailment of certification.

(43) Tampering--An overt or conscious attempt to physically disable, defeat, or otherwise disconnect the IID from its power source and thereby allow the operator to start the engine without taking and passing the requisite breath test.

(44) Temporary lockout -A period of time during which the IID will not allow a breath sample to be delivered or the engine to be started.

(45) Vendor--The manufacturer, the manufacturer's representative or the person or entity responsible for the day-to-day operations of an IID service center.

(46) Violation--Any of several events including but not limited to high alcohol concentrations, illegal starts, and failures to present rolling retests.

(47) Violation reset--An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a number predetermined by the department.

(48) Violation set point--An alcohol concentration determined by the department at which, or above, the device will record the high alcohol result in the data storage system as a violation.

(49) Withdrawal of approval--Cancellation of approval of an ignition interlock device or reference sample device; to wit, the device(s) not meeting or maintaining these regulations.

§19.22. Procedure for Device Approval.

(a) All ignition interlock devices to be used in the state pursuant to Texas Transportation Code, Chapter 521, must be approved by the department. These regulations and requirements apply only to IID usage in the Texas judicial system in applications such as pretrial services (bail bond requirements), adult supervision (probation or parole requirements) and occupational licensing requirements. They are not intended to apply to or limit IID use in a voluntary or non-adjudicated scenario such as a parent having an IID placed on a child's motor vehicle.

(b) The department will establish and maintain a list of approved devices for use in the state.

(c) If application is made for approval of a device not on the approved list, the following procedures shall apply.

(1) A manufacturer or manufacturer's representative requesting approval of a device must submit a production model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or the manufacturer's representative to incur costs of mailing or shipping of the device to and from the department. It shall also be the responsibility of the manufacturer or the manufacturer's representative to submit a certified check or money order in the amount of \$500 payable to the Texas Department of Public Safety (this is an administrative approval processing fee and is nonrefundable). In the event of non-approval, additional requests for approval may be limited by the department. The department shall not get involved in research and development procedures of these devices.

(2) Accompanying each device shall be a notarized letter and/or affidavit from a testing laboratory certifying that the submitted device meets or exceeds applicable minimum standards for breath alcohol ignition interlock devices established by the National Highway Traffic Safety Administration (NHTSA) at the time approval is requested. This letter or affidavit shall also include:

- (A) the name and location of the testing laboratory;
- (B) the address and phone number of the testing laboratory;
- (C) a description of the tests performed;
- (D) copies of the data and results of the testing procedures; and
- (E) the names and qualifications of the individuals performing the tests.

(d) Prior to approval of the device, the manufacturer or the manufacturer's representative shall complete and submit an application approval affidavit available from the department. The notarized application approval affidavit shall be signed by the manufacturer or the manufacturer's representative. This approval affidavit shall state that the device meets or exceeds all standards set forth in these regulations and will be calibrated and maintained pursuant to these regulations and as designated by the department.

(1) If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative and that it is agreed and understood that any action taken by the department or any cost incurred in accordance with the provisions of these regulations shall ultimately be the responsibility of the manufacturer.

(2) After the device is approved, in order to do business in the Texas IID program, a manufacturer must vend through a certified IID service center as described in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(3) Wherein a manufacturer or manufacturer's representative requests approval of a subsequent model device that introduces improvements to the design or technology of a currently approved model, the department may stipulate the time frame by which the currently approved model must be removed from service and replaced by the subsequent model device.

(e) An annual reevaluation of the approved IID, pursuant to Texas Transportation Code, Chapter 521, shall be required in order for continued approval. This reevaluation shall consider those requirements in §§19.23 - 19.25 of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection (c)(1) of this section.

(f) Vendors shall annually provide to the department a written report of each available service and feature of all approved IIDs. The department shall make available the form for this report.

(g) The vendor shall notify the department in writing if the approval or certification of a device that is approved for use in Texas is or ever has been denied, withdrawn, suspended or revoked in another state, whether such action occurred before or after approval in Texas. This notification shall be made in a timely manner, not to exceed 30 days, after the vendor has received notice of the denial, withdrawal, suspension or revocation of approval or certification of the device, whether or not the action is or has been appealed.

(h) Nothing in these regulations shall imply that an IID which was approved under an earlier version of these regulations is no longer approved because of revisions to these regulations, except for legislated requirements such as in subsection (e) of this section or changes in technology as referred to in §19.24(b)(2) of this title (relating to Miscellaneous Requirements) and §19.26(b)(2) of this title (relating to Approval, Denial, and Withdrawal of Approval).

§19.23. Technical Requirements.

(a) Accuracy. The startup set point value for the interlock device shall be an alcohol concentration of 0.030 g/210 liters of breath. The accuracy of the device shall be 0.030 g/210 liters plus or minus 0.010 g/210 liters. The accuracy will be determined by analysis of an external standard generated by a reference sample device, or other methodologies that may be approved by the department.

(b) Alveolar breath sample. The device shall have a demonstrable feature designed to assure that the breath sample that is measured is essentially alveolar.

(c) Precision. The device shall correlate with a known alcohol concentration of 0.030 g/210 liters with accuracy set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has an alcohol concentration of 0.030 g/210 liters or greater, or any other limits as set by the department.

(1) The proportion of false positive results shall not exceed 5.0%.

(2) The proportion of false negative results shall not exceed 5.0%.

(d) Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(e) Temperature. The device shall meet the requirements of subsections (a) and (c) of this section when used at ambient temperatures of -20 degrees Celsius to 83 degrees Celsius or other limits as set by the department.

(f) Rolling retest. To thwart curbside assistance, after passing the test allowing the engine to start, the IID shall require a rolling retest within a randomly variable interval ranging from 5 to 15 minutes. In order to alert the driver that a retest is to be required, a warning light and/or tone shall come on. If the engine is intentionally or accidentally shutdown during or after the warning but before retesting, the free restart shall not be operative. The driver will then be afforded sufficient time as determined by the department to retest. During the rolling retest, the retest set point shall be the same as the startup set point. The result of this test will be recorded in the data storage system and any result recorded that is equal to or greater than 0.030 g/210 liters shall be recorded as a violation in the data storage system. Second and

subsequent rolling retests shall be required at random intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. Refusal of any rolling retest shall result in a violation being recorded in the data storage system. After recording the violation, the IID shall immediately request another rolling retest. Continued refusals shall result in additional violations being recorded in the data storage system until a test is recorded or the engine is turned off.

(g) Vibrational stability. The device shall meet the requirements of subsections (a) and (c) of this section when subjected to simple harmonic motion having an amplitude of 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes. The device shall also meet the requirements to simple harmonic motion having an amplitude of 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes.

§19.24. Miscellaneous Requirements.

(a) Anticircumvention. The device shall be designed so that anticircumvention features will be difficult to bypass.

(1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypassing the breath sampling requirements of the device electronically.

(2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least once every sixty (60) days or more frequently if the need arises.

(4) When evidence of tampering is discovered, the appropriate judicial authority shall be notified in writing and these records shall be made available upon request to the department.

(b) Operational features.

(1) The device shall be designed to permit a free restart of a motor vehicle's ignition within a reasonable time as approved by the department after the ignition has been shut off, without requiring a further alcohol analysis.

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these regulations, the department may impose additional requirements, as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check as referred to in §19.25(a) of this title (relating to Maintenance and Calibration Requirements) to the next. All daily driving activity records in this data storage system shall be maintained by the service center and the vendor and shall be made available to the appropriate judicial authority or the department upon request.

(4) The device and the service center shall utilize the most current version of the manufacturer's software and firmware to ensure compliance with these regulations. The manufacturer's software and/or firmware shall require certain settings and operational features of the device including, but not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lockout conditions. The manufacturer's software and/or firmware shall not allow modification of certain settings and operational features of the device by the service center or the service representative unless the modification is approved by the ap-

propriate judicial authority or the department. A reasonable time as determined by the department will be granted if changes to these regulations require manufacturers to upgrade and/or revise their software and/or firmware.

(5) The device shall record emergency bypasses in the data storage system.

(6) When violations trigger a lockout condition requiring a violation reset, the device will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter the lockout condition after 72 hours. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.

(c) Product liability. The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Texas with a minimum policy limit of \$1 million.

(d) Service support. The vendor shall ensure responsibility for service support within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) Modifications. Once a device has been approved, no modification in design or operational concept may be made without prior written consent of the department. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device. However, the department is to be notified by the manufacturer of any subsequent software or firmware updates to the existing approved IID.

(f) Warning label. A label warning against tampering, circumventing, or misuse shall be affixed to each device.

(g) Safety. The device shall be designed to comply with generally recognized safety requirements.

(h) Specifications and operating instructions. Manufacturers shall provide a precise set of specifications and detailed operating instructions to the department with each device submitted for approval.

(i) Product indemnity. The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Texas, the department and its officers, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) General. Any other requirements as may be determined necessary by the department to ensure that the device functions properly and reliably.

§19.25. Maintenance and Calibration Requirements.

(a) The device shall be inspected, maintained, and checked for calibration accuracy and operational performance at least once every sixty (60) days and more frequently, if necessary, as specified by the department. This maintenance and calibration check will be performed by a certified IID service center as described in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(b) The maintenance and calibration check will consist of, but not be limited to, a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) accuracy--§19.23(a) of this title (relating to Technical Requirements);

(A) The device shall be calibrated before placing into service. The calibration described herein shall verify the IID accuracy to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(B) Upon return to the service center as in subsection (a) of this section, the device shall be subjected to a calibration confirmation test. This test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The vendor's software shall be capable of performing, documenting and reporting the result of this calibration confirmation test. The test result described herein shall verify the accuracy of the IID to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(i) Should the device fail the calibration confirmation test referred to in subsection (b)(1)(B) of this section that information shall be made available to the appropriate judicial authority.

(ii) Should the calibration confirmation test referred to in subsection (b)(1)(B) of this section not agree within plus or minus 0.010 g/210 liters of the reference sample predicted value, the device shall be recalibrated so as to restore the accuracy described in subsection (b)(1)(A) of this section before the device may be returned to service.

(2) anticircumvention--§19.24(a) of this title (relating to Miscellaneous Requirements); and

(3) operational features--§19.24(b) of this title (relating to Miscellaneous Requirements).

(c) Maintenance and calibration records shall be maintained by the manufacturer, the manufacturer's representative, and/or the vendor and shall be provided upon request to the department and/or any appropriate judicial authority.

(d) If at any time the device fails to meet the provisions of this section, the device shall be removed from service or calibrated and/or repaired, and these records shall be made available upon request to the department and/or any appropriate judicial authority.

§19.27. Certification and Inspection of Service Centers.

(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the department.

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer's representative shall submit an application to the department for approval. The application, available from the department, shall show the physical location of the service center, the ignition interlock device(s) to be merchandised and the reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by the application. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) allow access for inspection under subsection (d) of this section,

(2) comply with subsection (g) of this section,

(3) comply with §19.24(c) of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and

(4) comply with §19.24(d) of this title (relating to Miscellaneous Requirements) concerning service support requirements.

(c) IID testing protocol, in order to be approved, shall meet, but not be limited to, the following:

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing and/or removing a specific IID device(s). A designated waiting area that is separate from the installation area is to be provided for the customer. The customer is not to witness the installation of the IID. The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and alcohol, the results of which must agree with the reference sample predicted value as in §19.25(b)(1)(A) and (B) of this title (relating to Maintenance and Calibration Requirements), or other methodologies that may be approved by the department. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the department. Only reference sample devices approved by the department may be used in certified IID operations.

(2) All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L). The startup set point shall be an alcohol concentration of 0.030 g/210 liters of breath.

(3) Services rendered by the IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the customer of an acceptable level of service. The IID vendor's software shall document the representative performing the monitor check and when it was performed. The IID service center must at all times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the department to train before being required to take and pass the IID service representative examination.

(4) The applicant must agree to submit, maintain or make available any specified records designated by the department, including but not limited to:

(A) submitting violation(s) if any, of any court order to the appropriate judicial authority, not later than 48 hours after the vendor discovers the violation,

(B) maintaining complete records of each device installation for five years from the date of the removal, and

(C) making all IID records available, either by inspection or via copy to any appropriate judicial authority and upon request to the department.

(5) All anticircumvention features must be activated on any installed IID.

(6) The device must be installed and inspected in accordance with any applicable court order. Furthermore, the service center, through the certified IID representative(s), shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period. In the case wherein the customer returns to the service center as in §19.25(a) of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, or in the case wherein an individual other than the customer returns with the vehicle, such fact(s) shall be made available to the appropriate judicial authority.

(7) The applicant must agree to abide by certain conditions for the removal of an IID, including but not limited to the following:

(A) No IID shall be removed without authorization from the appropriate judicial authority and such removal shall be documented and the records retained by the service center.

(B) All certified service representatives and service centers are prohibited from removing the device of another vendor except in an emergency or a special circumstance authorized by the appropriate judicial authority or the department. All such removals are to be documented and reported to the department. The removal records are to be retained by the service center.

(C) When a customer desires to change from one vendor to another, it shall be the responsibility of the original installing vendor to ensure removal authorization has been issued by the appropriate judicial authority. Upon authorized removal, a final report shall be made to the appropriate judicial authority, thus ensuring no data being omitted. The appropriate judicial authority should then further dictate the procedure by which the customer shall acquire another vendor's device.

(D) Certified service representatives in violation of the procedures outlined herein may have their certification inactivated or suspended. Certified service centers found in violation of these procedures may have their certification inactivated, suspended or revoked.

(d) An IID inspector or a designated representative of the department may at any time make an inspection of the certified IID service center to ensure compliance with these regulations.

(e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(f) Upon proof of compliance with subsections (a) - (c) of this section, a certificate will be issued by the department that will be valid unless certification is inactivated, suspended or revoked. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification. Prior to issuance of the certification, an on-site evaluation may be required by the department to ensure compliance with the provisions of this section.

(g) Certification of the IID service center is contingent upon the applicant's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the department regarding any aspect of the IID service center; this shall include, but not be limited to, the following:

- (1) program administration;
- (2) reports;
- (3) records and forms;
- (4) inspections;
- (5) methods of operations and testing protocol;
- (6) personnel training and qualifications;
- (7) criminal history considerations for service representatives; and
- (8) records custodian.

(h) A manufacturer shall be responsible for providing continuing service by a certified service center during the installation period, without interruption, should a certified service center go out of business or be revoked.

(1) If the out of business or revoked service center is being replaced by the manufacturer, all reasonable efforts shall be made to

obtain customer records and data from the service center being replaced and provide them to a new certified service center that is within 25 miles of the service center that is going out of business or being revoked. The department and the appropriate judicial authority shall be notified of this event as soon as possible.

(2) If the out of business or revoked service center is not replaced, the manufacturer shall retain the records and data as required in subsection (e)(1) of this section. The department and the appropriate judicial authority shall be notified of this event as soon as possible.

(A) The manufacturer whose out of business or revoked service center is not replaced shall be responsible for, and shall bear the cost of, removal of the original IID and replacement with another approved IID, regardless of the manufacturer of the device being substituted, if another manufacturer's device is available at a certified service center that is no more than 25 miles from the service center that is going out of business or being revoked.

(B) The manufacturer shall make every reasonable effort to notify all customers of the change of the certified service center or replacement of the device 30 days before the change or replacement will occur, or as soon as is possible.

(3) If neither subsection (e)(1) nor subsection (e)(2) of this section can be accomplished, the manufacturer shall be responsible for notifying the customers, the department, and the appropriate judicial authority that service will be terminated within 60 days, and then removing the devices at no cost to the customers in question.

(i) Certification of an IID service center may be denied, inactivated, suspended or revoked by the department if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates or is not in compliance with any of these regulations or if the vendor violates any law of this state that applies to the vendor.

(1) Service center certification denial. Certification of an IID service center may be denied if a vendor, service center, service representative or IID equipment fails to meet all criteria stated in this section, or if the vendor has violated or is not in compliance with any IID regulation. Furthermore, a vendor's request to open additional service centers may be denied if there is pending action against the vendor for any violation of these regulations.

(2) Service center inactivation. Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified service center in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the department. A service center that no longer meets all the requirements for certification shall be inactivated. Inactivation shall be used for administrative program control to safeguard the scientific integrity of the IID program.

(3) Service center suspension. Suspension refers to the immediate curtailment of certification and may be applied to the service center when, because of unreliability, incompetence, or violation of these regulations the service center is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department would not uphold the scientific integrity of the IID program. A suspension can be initiated by an IID inspector or designated representative of the department. The minimum period of suspension will be for a period of time not less than 30 days. The IID inspector or a designated representative of the department may

recommend a specific period of suspension to the department. A suspension curtails any certification issued to the service center for a period of suspension until renewal of certification. During a suspension, the suspended service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not acquire new or transferred IID customers during the period of suspension. The manufacturer and appropriate judicial authorities shall be notified when a service center is suspended. Suspension shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(4) Service center revocation. Revocation refers to the immediate cancellation of certification. Revocation cancels any certification issued to the revoked service center for the period of revocation and until renewal of certification. Unless provided for by specific provision in these regulations, revocation will apply when the service center no longer meets the criteria for certification or no longer meets the requirements of these regulations because of unreliability, incompetence, or violation of these regulations, or in any case where, in the opinion of the department, continuance of certification would not uphold the scientific integrity of the IID program. If after the allowed appeals process, the revocation of a service center is sustained, the revoked service center shall be required to replace the IID service and/or the IID as in §19.25(e) of this title (relating to Maintenance and Calibration Requirements). In the event that no appeal from the revoked service center is forthcoming, the revoked service center shall have 30 days to achieve the requirements of §19.25(e) of this title (relating to Maintenance and Calibration Requirements). The appropriate manufacturer and judicial authorities shall be notified when a service center is revoked. Revocation shall be for the purpose of maintaining the scientific integrity of the IID program and enforcing these regulations.

(j) Appeal of denial, suspension or revocation. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been suspended or revoked may appeal such action as follows:

(1) The appeal shall be in writing and shall be received by the department no later than twenty (20) days after receipt of the letter notifying the service center of the action being taken by the department. No enforcement action will be taken by the department during this twenty (20) day period. Written request for appeal should be mailed to: Texas Department of Public Safety, Scientific Director, Breath Alcohol Test Bureau, P.O. Box 4087, Austin, Texas 78773-0570.

(2) A request for appeal shall be governed by the provisions of Chapter 2001 of the Texas Government Code, and the procedures in 37 Texas Administrative Code, Chapter 29.

(3) If the department does not receive a timely request for appeal, the department may deny the application for certification or sustain the suspension or revocation of certification without a hearing.

(k) The renewal of certification of a service center whose certification has been inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2006.
TRD-200601409

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: March 26, 2006

Proposal publication date: September 9, 2005

For further information, please call: (512) 424-2135



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of intent to review and readopt 16 Texas Administrative Code (TAC) Chapter 13, relating to Regulations for Compressed Natural Gas (CNG), in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist; however, in a separate, concurrent rulemaking, the Commission is proposing amendments to §§13.2 - 13.4, 13.25, 13.35, 13.36, 13.38, 13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.92 - 13.94, 13.102, 13.141, and 13.183, relating to Retroactivity; Definitions; CNG Report Forms; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; Removal from CNG Service; Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualifications as Self-Insured; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Other Fees for Employee Transfer; Franchise Tax Certification and Assumed Name Certificate; System Component Qualification; General; Location of Installations; Installation of Electrical Equipment; System Testing; and System Component Qualifications; the repeal of §13.80, relating to CNG Continuing Education Requirements, and new §13.80, relating to Requests for CNG Classes.

The concurrent proposal is, in part, a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005), which amended Texas Natural Resources Code, §116.034, to provide that the Commission may

adopt rules establishing training and seminar attendance requirements for persons required or who wish to be licensed or registered to perform compressed natural gas (CNG) activities, but is not required to do so. Additional proposed amendments are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The proposed amendments, repeal, and new section will be filed with the Texas Register concurrently with this proposed review.

Comments on the notice of intent to review the rules in 16 TAC Chapter 13 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/comment-form.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline; the Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Dan Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on February 28, 2006.

TRD-200601351

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Filed: March 2, 2006



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §13.62(i)(5)

TABLE 1

Category of License	Type of Coverage	Insurance Policy Endorsement Required	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	CNG Form 1996A	CNG Form 1996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	N/A	CNG Form 1996A	N/A
2, 5, 6	General liability coverage including: premises and operations in an amount not less than \$25,000 per occurrence and \$50,000 aggregate	CG 02 05, Texas Changes Amendment, Cancellation Provisions, or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
1, 3, 4	Completed operations and products liability insurance in an amount not less than \$300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
3 and Ultimate Consumer	Motor vehicle coverage: minimum \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE0202A, Cancellation Provision or Coverage Change Endorsement	CNG Form 1997A	CNG Form 1997B

Figure: 16 TAC §13.70(a)(1)

Examination and Other Requirements for Licenses by Category
Table 1

	License Categories					
	1	2	3	4	5	6
Employee Level Exams Offered:						
1. Company Representative Management Exam	*	*	*	*	*	*
2. Operations Supervisor (Branch Manager) Management Exam	*	*	*	*	*	*
3. Employee - CNG Service and Installation Exam	*	*				
4. Employee - CNG DOT Cylinder Filling Exam			*		*	
5. Employee - CNG Transport Driver/Service and Installation, including CNG DOT Cylinder Filling Exam, or Ultimate Consumer (any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport, and any employee of the ultimate consumer who drives or in any way operates a CNG transport must pass the CNG transport driver/service and installation, including the DOT cylinder filling, examination)		*	*		*	
6. File CNG Form 1016	*	*	*	*	*	*
7. Employee - Pay \$25 Annual Renewal Fee on or before May 31 each year	*	*	*	*	*	*
8. File CNG Form 1016B (applies to the installation, service, or repair of CNG systems and the installation of CNG cylinders, excluding the installation, service, or repair of CNG carburetion equipment for the categories marked)	*	*				

Figure: 16 TAC §13.93(e)

SIGNS/LETTERING

Requirements	Automatic Dispenser/ Refueling Area⁵	Fueling Connection Receptable CNG Fueled Vehicle	Engine Compartment of CNG Fueled Vehicle	Emergency Shutdown Devices	Compression Area⁵
1. Signs with Red Letters at Least 2 Inches High, on White Background - NO SMOKING ¹	■				■
2. Sign with Red Letters at Least 4 Inches High, on White Background: WARNING-FLAMMABLE GAS; Black letters: NO TRESPASSING					■
3. Letters at Least 2 Inches High: NATURAL GAS	■ ⁷				■
4. CNG FUELED VEHICLE		■ ²	■		
5. System Working Pressure _____		■ ²	■		
6. Name of Licensee and License Number			■		
7. Cylinder Retest Date(s) or Expiration Date(s) ³		■ ²	■		
8. Total Cylinder Water Volume in Gallons			■		
9. Sign with White Letters at Least 2 Inches High on Red Background: CNG EMERGENCY VALVE; PUSH				■ ⁴	
10. Letters at Least 4 Inches High: Name of Licensee Operating Installation	■ ⁶				■ ⁶

NOTES TO §13.93, TABLE 1

1. *Location of sign shall be determined by on-site conditions, but shall be visible from each point of transfer.*
2. *On durable label, readily visible. Information in items 4, 5, 6, 7, 8 may be combined on one label.*
3. *When applicable.*
4. *Devices shall be distinctly marked for easy recognition with permanently affixed, legible sign.*
5. *Does not apply to residential/refueling facility.*
6. *One sign may be installed at either location.*
7. *On each operating side of dispenser.*

Figure: 16 TAC §13.94(d)

MINIMUM DISTANCE REQUIREMENTS FOR CNG INSTALLATIONS

	Compression Equipment	Dispensing Equipment ¹	Storage Cylinders or Cascades	Point of Transfer
1. Nearest Building ²	10 feet	10 feet	10 feet	10 feet
2. Nearest Building Opening	10 feet	10 feet	10 feet	10 feet
3. Nearest Public Street, Sidewalk line, Roadway, Adjoining Property Line	10 feet	10 feet	10 feet	10 feet
4. Nearest rail of any railroad main track	50 feet	50 feet	50 feet	50 feet
5. Source of ignition/combustible material ³	10 feet	10 feet	10 feet	10 feet
6. Above ground tanks containing flammable or combustible liquid	N/A	N/A	20 feet	20 feet
7. Manufactured housing	N/A	N/A	N/A	10 feet
8. Other CNG automatic dispensers or dispensers of flammable fuel	N/A	3 feet	N/A	N/A

NOTES TO §13.94, TABLE 1

1. Includes automatic dispensers.
2. Upon approval by the commission, equipment may be located a lesser distance from buildings or walls constructed of concrete or other noncombustible materials. This exception does not apply to building openings.
3. Source of ignition includes, but is not limited to, an open flame, open light switch, all smoking materials, pilot lights, and non-explosion proof lights. Combustible materials include, but are not limited to, trash, weeds, and wood.

N/A = Not applicable

Figure: 16 TAC §13.102(a)

Installation of Electrical Equipment

Location	Division	Extent of Classified Area
Containers (other than mounted fuel supply containers)	2	Within 10 feet of container
Area containing compression and ancillary equipment	2	Up to 15 feet from equipment
Dispensing equipment outdoors	2	Inside dispenser cabinet
Outdoors	2	From 0 to 20 feet from the dispenser

Figure: 16 TAC §14.2019(a)(3)

**EXAMINATION AND COURSE OF INSTRUCTION
TABLE 1**

Categories of Licenses

	15	20	25	30	35	40	45	50
Company Representative Management Exam	*	*	*	*	*	*	*	*
Operations Supervisor (Branch Manager) Management Exam	*	*	*	*	*	*	*	*
Employee Level - Service & Installation (including Transport Driver and Motor Fuel Dispenser) Exam			*	*	*	*		
Employee Level - Transport Driver Exam			*		*			
Employee Level - Engine Fuel Exam					*		*	*
Employee Level - Service & Installation Exam				*	*			
Employee Level - Motor/Mobile Fuel Dispenser Exam					*	*	*	
File LNG Form 2016	*	*	*	*	*	*	*	*
File LNG Form 2016B					*			
[Category 35 Course of Instruction]					[*]			

Figure: 22 TAC §741.103(1)

Octave Band Internal	Supra-Aural Earphone	Insert Earphone
125 Hz	39 dB	67 dB
250 Hz	25 dB	53 dB
500 Hz	21 dB	50 dB
1000 Hz	26 dB	47 dB
2000 Hz	34 dB	49 dB
4000 Hz	37 dB	50 dB
8000 Hz	37 dB	56 dB

Figure: 30 TAC §101.506(b)(2)(C)

$$HI = \left[\left(O \times 3,414 \text{ Btu/kWh} \right) + \left(\frac{HE}{0.8} \right) \right] \div 1,000,000 \text{ Btu/MMBtu}$$

Where:

Btu	=	British thermal units
HE	=	the total heat energy, in Btu, of the steam produced by any associated heat recovery steam generator during the control period.
HI	=	the converted heat input, in MMBtu, of the combustion turbine cogeneration unit.
kWh	=	kilowatt-hour
MMBtu	=	million British thermal units
O	=	the gross electrical output during the control period of the enclosed device comprising the compressor, combustor, and turbine.

Figure: 30 TAC §101.506(b)(3)(C)

$$HI = \left[(O \times 3,414 \text{ Btu/kWh}) + \left(\frac{HE}{0.8} \right) \right] \div 1,000,000 \text{ Btu/MMBtu}$$

Where:

- Btu = British thermal units
- HE = the total heat energy, in Btu, of the steam produced by any associated heat recovery steam generator during the control period.
- HI = the converted heat input, in MMBtu, of the combustion turbine cogeneration unit.
- kWh = kilowatt-hour
- MMBtu = million British thermal units
- O = the gross electrical output during the control period of the enclosed device comprising the compressor, combustor, and turbine.

Figure: 30 TAC §101.506(c)

$$A = \frac{HI}{\sum_{i=1}^n HI_i} \times B$$

Where:

- | | | |
|-----------|---|---|
| A | = | the amount of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO _x) allowances allocated to a CAIR NO _x unit rounded to the nearest whole allowance. |
| i | = | each CAIR NO _x unit qualifying for an allocation under this subsection. |
| n | = | the total number of CAIR NO _x units qualifying for an allocation under this subsection. |
| HI | = | the baseline heat input for a CAIR NO _x unit qualifying for an allocation under this subsection as calculated under subsection (a) or (b)(2) or (3) of this section. |
| B | = | a total amount of CAIR NO _x allowances equal to 90.5% of the NO _x trading budget identified in §101.506(a) of this title, except as provided in subsection (e) of this section. |

Figure: 30 TAC §101.506(d)(4)(D)

$$A = \frac{RQ}{\sum_{i=1}^n RQi} \times SA$$

Where:

- A = the amount of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO_x) allowances, rounded to the nearest whole allowance, allocated to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director.
- i = each CAIR NO_x allowance allocation request accepted by the executive director.
- n = the total number of CAIR NO_x allowance allocation requests accepted by the executive director.
- RQ = the amount of the CAIR NO_x allowances requested, as adjusted under subparagraph (A) of this paragraph, for each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director.
- SA = the total amount of CAIR NO_x allowances in the new unit set-aside identified under §101.503(b) of this title (relating to Clean Air Interstate Rule Oxides of Nitrogen Annual Trading Budget).

Figure: 30 TAC §101.508(d)(3)

$$A = \frac{RQ}{\sum_{i=1}^n RQi} \times SP$$

Where:

A	=	the number of Clean Air Interstate Rule (CAIR) oxides of nitrogen (NO _x) allowances, rounded to the nearest whole allowance, allocated from the compliance supplement pool to a unit covered under a compliance supplement pool allocation request accepted by the executive director.
i	=	each compliance supplement pool allocation request accepted by the executive director.
n	=	the total number of compliance supplement pool allocation requests accepted by the executive director.
RQ	=	the amount of CAIR NO _x allowances requested for the unit under subsection (b) or (c) of this section, as adjusted under subsection (d)(1) of this section.
SP	=	the amount of CAIR NO _x allowances in the compliance supplement pool.

Figure: 37 TAC §5.55(b)



Task Force Application Cover Sheet



Task Force Name:					
Project Director					
Name:				Title:	
	<i>Last</i>	<i>First</i>	<i>M.I.</i>		
Address:					
	<i>Street Address</i>				
			TX		
	<i>City</i>		<i>State</i>	<i>ZIP Code</i>	
Phone:	()	-	x	E-mail Address:	
Fax Number:	()	-	x		
Task Force Commander					
Name:				Title:	
	<i>Last</i>	<i>First</i>	<i>M.I.</i>		
Address:					
	<i>Street Address</i>				
			TX		
	<i>City</i>		<i>State</i>	<i>ZIP Code</i>	
Phone:	()	-	x	E-mail Address:	
Fax Number:	()	-	x		
LIST the cities and counties within the impact area:					

NAR-122

PROJECT NARRATIVE FORM

Problem Statement: Provide a statement of the specific problem or problems, i.e. the strategic need this project is designed to address. This narrative should include information that defines the drug threat and explains the strategic need for the task force in the particular impact area.

NAR-122

Supporting Data: Provide data that supports the problem. Use only data that is verifiable and relevant to your impact area. The data should be derived from baseline statistics. In addition, provide citations for the sources of your data.

NAR-122

Goal Statement: Based on your problem statement, provide a goal statement. It should address the intended impact your project seeks to attain. **DO NOT LIST ACTIVITIES.**

NAR-122

Project Summary: Briefly summarize the application, including the project's problem statement, supporting data, goal, activities, and objectives. Be sure that the summary is easy to understand by a person not familiar with your project and that you are confident and comfortable with the information if it were to be released under a public information request. A separate document should be attached to this application that fully describes the composition of the task force, to include the names of the participating agencies and the names, training records, and experience of the individual officers to be assigned to the task force.

NAR-122

Certifications:

- A. At least twenty-five percent of personnel assigned to the task force shall be randomly tested at least quarterly for drugs by an independent scientific laboratory that meets federal Department of Health and Human Services guidelines for drug/metabolite testing. The Project Director shall provide the director with a copy of the task force's written drug testing policy if requested. The Project Director shall maintain documentation on file evidencing that the above drug testing was conducted. The Project Director shall notify the director of the identity of any employee with a positive drug test and shall take appropriate action as outlined in the applicant agency's policy on providing a drug-free workplace.**
- B. Applicant agrees that any aspect of the task force operation, including all records related to the operation of the task force, may be inspected to ensure compliance with state and federal law and requirements as well as policies and procedures established by DPS. Applicant agrees that the task force shall timely, accurately, and completely respond to any request for information, data, or reports by the director.**
- C. Personnel - The Project Director shall notify the director in writing, within five calendar days of the arrest, of the identity of any personnel that are arrested, the reason for the arrest, and any resulting action taken by the task force.**
- D. Litigation - The Project Director shall notify the director in writing of any lawsuit or pending litigation involving the task force or its personnel no later than five calendar days after receiving notice of any lawsuit or pending litigation.**

The signature of the Project Director certifies that the applicant task force and any personnel assigned to the task force shall comply with all requirements contained in this application in addition to the following: (1) department policies and procedures in the most current version of the department's task force manual; (2) state and federal law and requirements; (3) all department rules; and (4) best police practices. In addition, if the Project Director or any task force personnel change, then the current Project Director shall notify the director within five calendar days after the change. A task force shall have a current Project Director at all times. If the Project Director changes, the current Project Director shall complete and sign the certification section of the application form and submit the certification to the director within five calendar days after the change.

Project Director

Date

NAR-122

Figure: 37 TAC §15.89(b)

Arrest Title	Driver Responsibility Points
Aggravated assault with motor vehicle	Yes
[ALR-CMV-.04 > ADM]	[No]
[ALR-CMV-HZMT-.04 > ADM]	[No]
[ALR-CMV-HZMT-REF-ADM]	[No]
[ALR-CMV-REFUSAL-ADM]	[No]
Backed up on shoulder (or roadway) of controlled access highway	Yes
Bus driver failed to activate warning signal/equipment	Yes
Bus failed to stop at RR crossing	Yes
Bus shifting gears while crossing RR tracks	Yes
Changed lane when unsafe	Yes
<u>Child passenger safety seat offense</u>	<u>Yes</u>
Coasting	Yes
Coasting (truck, truck tractor or bus, specify) with clutch disengaged	Yes
Consume alcohol while driving	Yes
Criminal negligent homicide with motor vehicle--1st or 2nd degree	Yes
Crossed RR with heavy equipment without notice	Yes
Crossed RR with heavy equipment without stop (or safety)	Yes
Crossing fire hose without permission	Yes
Crossing physical barrier	Yes
Cut across driveway to make turn	Yes
Cut corner left turn	Yes
Cut in after passing	Yes
Did not use designated lane or direction	Yes
Disregard solid green turn signal arrow	Yes
Disregarded flashing red signal (at stop sign, etc.)	Yes
Disregarded flashing yellow signal	Yes
Disregarded lane control signal	Yes
Disregarded no lane change sign	Yes
Disregarded no passing zone	Yes
Disregarded police officer	Yes
Disregarded RR crossing gate or flagman	Yes
Disregarded signal at RR crossing	Yes

Disregarded traffic control device	Yes
Disregarded turn marks at intersection	Yes
Disregarded warning sign at construction	Yes
Drive into block where fire engine stopped	Yes
Driving under influence	No
Driving under influence (DUI)--minor	Yes
Driving under influence of drugs	No
Driving while impaired	No
Driving while intoxicated > 0.16	No
Driving while intoxicated with child younger than 15 yoa	No
Driving while intoxicated--felony	No
Driving while intoxicated--juvenile	No
Driving while intoxicated--misdemeanor	No
Driving while intoxicated--on beach	No
Driving while intoxicated--probated	No
Driving while intoxicated--under 21	No
Driving while license disqualified--CMV	No
Driving while license suspended under provisions of DL laws	No
Driving while license suspended--SR	No
Drove center lane (not passing, not turning left)	Yes
Drove on (or across) streetcar tracks where prohibited	Yes
Drove on sidewalk	Yes
Drove on wrong side--RR crossing	Yes
Drove on wrong side of approaching bridge	Yes
Drove on wrong side of divided highway	Yes
Drove on wrong side of road	Yes
Drove on wrong side road approaching intersection	Yes
Drove on wrong side road approaching RR grade crossing	Yes
Drove on wrong side road awaiting access to ferry	Yes
Drove onto (or from) controlled access highway where prohibited	Yes
Drove through safety zone	Yes
Drove to left of rotary traffic island	Yes
Drove without lights--when required	Yes
Drove wrong way in designated lane	Yes
Drove wrong way on one-way roadway	Yes
Endorsement violation CDL	No [Yes]

Excessive acceleration (NO LONGER OFFENSE 9/01/2003)	No
Exhibition of Acceleration (NO LONGER OFFENSE 9/01/2003)	No
Fail to control speed	Yes
Fail to dim headlights--following	Yes
Fail to dim headlights--meeting	Yes
Fail to drive in single lane	Yes
Fail to give hand signals when required	Yes
Fail to give info/render aid	No
Fail to give one-half of roadway	Yes
Fail to keep to right on mountain road	Yes
Fail to pass left safely	Yes
Fail to pass met vehicle to right	Yes
Fail to pass to right safely	Yes
Fail to signal for stop	Yes
Fail to signal required distance before turning	Yes
Fail to signal turn	Yes
Fail to signal with turn indicator	Yes
Fail to sound horn--mountain road	Yes
Fail to stop--designated point--at stop sign	Yes
Fail to stop--designated point--at yield sign	Yes
Fail to stop and render aid--felony	No
Fail to stop and render aid--misdemeanor	No
Fail to stop at marked RR crossing	Yes
Fail to stop at proper place (at traffic light)	Yes
Fail to stop at proper place (flashing red signal)	Yes
Fail to stop at proper place (not at intersection)	Yes
Fail to stop for approaching train	Yes
Fail to stop for approaching train--hazardous proximity	Yes
Fail to stop for school bus (or remain stopped, specify)	Yes
Fail to stop for streetcar--or stop at wrong location	Yes
Fail to stop--emerging from alley, driveway or bldg.	Yes
Fail to use due care for pedestrian	Yes
Fail to use proper headlight beam	Yes
Fail to yield at stop intersection	Yes
Fail to yield at yield intersection	Yes
Fail to yield for blind or incapacitated person	Yes

Fail to yield right of way	Yes
Fail to yield right of way from private road	Yes
Fail to yield row at open intersection (specify type)	Yes
Fail to yield row leaving (private drive, alley, building)	Yes
Fail to yield row on green arrow signal	Yes
Fail to yield row on green signal	Yes
Fail to yield row on left at obstruction	Yes
Fail to yield row to emergency vehicle	Yes
Fail to yield row to pedestrian at signal intersection	Yes
Fail to yield row to pedestrian in crosswalk	Yes
Fail to yield row to pedestrian in crosswalk--no signal	Yes
Fail to yield row to pedestrian on sidewalk	Yes
Fail to yield row to pedestrian turning right or left at intersection	Yes
Fail to yield row to pedestrian--green arrow signal	Yes
Fail to yield row--changing lanes	Yes
Fail to yield row--turning left (at intersection, alley, private road or driveway)	Yes
Fail to yield row--turning right on red signal	Yes
Fail to yield to vehicle in intersection	Yes
Fail to yield to vehicle leaving highway	Yes
Failed to give way when overtaken	Yes
Failed to signal lane change	Yes
Fleeing from police officer	Yes
Following ambulance	Yes
Following fire apparatus	Yes
Following too closely	Yes
Following too closely--caravan	Yes
Following too closely--truck	Yes
Head lamps glaring not adjusted	Yes
Heavy equipment disregarded signal of train	Yes
Illegal backing	Yes
Illegal pass on right	Yes
Illegally passed streetcar	Yes
Impeding traffic	Yes
Improper turn	Yes
Improper turn or stop hand signal	Yes
Improper use of auxiliary driving lamps	Yes

Improper use of auxiliary passing lamps	Yes
Improper use of lighting--hwy. equip.	Yes
Improper use of spot lamps	Yes
Improper use of turn indicator	Yes
Increased speed while being overtaken	Yes
Interfere with streetcar	Yes
Intoxication assault	No
Intoxication assault motor vehicle	No
Intoxication manslaughter	No
Intoxication manslaughter motor vehicle	No
Involuntary manslaughter with motor vehicle	Yes
Leaving scene of accident	Yes
Leaving scene of accident--vehicle damage	Yes
Made U-turn on curve or hill	Yes
Murder--with motor vehicle	Yes
Negligent collision	Yes
No commercial driver license (CDL)	No
No double trailer endorsement (CDL)	No
No driver license	No
No hazmat endorsement (CDL)	No
No motorcycle endorsement	No
No passenger vehicle endorsement (CDL)	No
No tank vehicle endorsement (CDL)	No
No school bus endorsement (CDL)	No
Obstructed view through windshield	Yes
Obstructing traffic	Yes
Open Container DRIVER	Yes
Operate vehicle more than one passenger-minor	Yes
Operate vehicle where prohibited	Yes
Operate vehicle with child in open bed	Yes
Passed streetcar on left without reducing speed or without caution	Yes
Passed vehicle stopped for pedestrian	Yes
Passed--insufficient clearance	Yes
Passengers/load obstruct driver's view or control	Yes
Passing authorized emergency vehicle	Yes
Permitted/operated unsafe vehicle	Yes

Person(s) riding in trailer or semi-trailer	Yes
Prohibited motor vehicle on controlled-access highway	Yes
Racing--drag racing--acceleration contest, etc.	Yes
Ran red light	Yes
Ran stop sign	Yes
Reckless driving	Yes
Restriction violation--CDL	Yes
Slower vehicle failed to keep to right	Yes
Speed under minimum	Yes
Speeding	No
Speeding > 10% above posted speed limit	Yes
Speeding--15 miles or over (CDL)	Yes
Speeding--school zone	Yes
Too many riders on motorcycle	Yes
Turned across dividing section	Yes
Turned left from wrong lane	Yes
Turned right from wrong lane	Yes
Turned right too wide	Yes
Turned so as to impede or interfere with streetcar	Yes
Turned when unsafe	Yes
Unauthorized use of siren, bell or whistle	Yes
Unsafe speed (too fast for conditions)	Yes
Unsafe start from parked, stopped or standing position	Yes
Use of school bus signal for wrong purpose	Yes
Veh. hauling explosives (or flammable materials) failed to stop at RR crossing	Yes
Veh. hauling explosives failed to reduce speed at RR crossing	Yes
Vehicle without required equipment or in unsafe condition	Yes
Violate DL restriction	Yes
Violate DL restriction on occupational license	Yes
Violate operating hours-minor	Yes
Violated out of service order	Yes
Wrong side road--not passing	Yes
Wrong side, 4 or more lane, two-way roadway	Yes

Figure: 40 TAC §748.133

Change:	Deadline for notifying us:
(1) The legal structure of your operation	At least seven working days before making the change
(2) The composition of the governing body	Within 15 days of such a change
(3) The information about governing body officers, executive committee, or members, such as name or location changes	Within 15 days of learning about a change

Figure: 40 TAC §748.303(a)

Serious Incident	(i) To Licensing?	(i) To Parents?	(i) To Law enforcement?
	(ii) If so, when?	(ii) If so, when?	(ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately.	(C)(i) YES (C)(ii) Immediately.
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse is: physical injury that results in substantial bodily harm and requiring emergency medical treatment, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial bodily harm to a child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable.

(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable.
(6) A child is indicted, charged, or arrested for a crime.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(7) A child developmentally or chronologically under 6 years old is absent from your operation and cannot be located.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(8) A child developmentally or chronologically 6 to 12 years old is absent from your operation and cannot be located.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(9) A child 13 years old or older is absent from your operation and cannot be located.	(A)(i) YES (A)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(B)(i) YES (B)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(C)(i) YES (C)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.

<p>(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).</p>	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable.</p>
<p>(11) A suicide attempt by a child.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as you become aware of the incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as you become aware of the incident.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable.</p>

Figure: 40 TAC §748.307

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any occurrence that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.
(3) Adding a swimming pool or other permanent body of water.	(A)(i) YES, in writing. (A)(ii) Within 15 days before you begin the construction.	(B)(i) NO (B)(ii) Not applicable.
(4) Offering new services, such as treatment services, assessment services, or a transitional living program.	(A)(i) YES, in writing. (A)(ii) Before the services are offered, because Licensing must approve the new services before they may be offered.	(B)(i) NO (B)(ii) Not applicable.
(5) Changes in written policies that are required by Licensing.	(A)(i) YES, in writing. (A)(ii) Before the changes to the policies are implemented, because Licensing must approve the changes before they may be implemented.	(B)(i) NO (B)(ii) Not applicable.

(6) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>
(7) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	<p>(A)(i) YES</p> <p>(A)(ii) Within 24 hours after learning of the allegation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>
(8) An investigation of abuse or neglect by an entity (other than Licensing) of an employee, professional level service provider, volunteer, or other adult at the operation.	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>
(9) An arrest, indictment, or a county or district attorney accepts information regarding an official complaint against an employee, professional level service provider, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>
(10) Changing your child-care administrator.	<p>(A)(i) YES, in writing.</p> <p>(A)(ii) Within seven days after the action is taken.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>

Figure: 40 TAC §748.313

Serious incident	Documentation
(1) Child death, suicide attempt, or a critical injury reportable under §748.303(a)(2) of this title (relating to When must I report and document a serious incident involving a child in my care?).	Any emergency behavior interventions implemented on the child within 48 hours prior to the serious incident.
(2) Any critical injury reportable under §748.303(a)(2) of this title that resulted from a short personal restraint.	Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.
(3) Child absent without permission.	(A) Any efforts made to locate the child; (B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child's absence and subsequent location or return to the operation; and (C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child's absence and subsequent location or return to the operation.
(4) Any abusive behavior among children reportable under §748.303(a)(4) or (5) of this title.	The difference in size, age, and developmental level of the children involved in the abusive behavior.

Figure: 40 TAC §748.563(a)

Educational qualifications:	Professional qualifications:
(A) A master's degree or higher from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a treatment setting serving children, including RTCs, child-placing agencies providing treatment services, Intermediate Care Facilities for children with mental retardation (ICFMR), etc.

Figure: 40 TAC §748.563(b)

Options:	Educational qualifications:	Professional qualifications:
Option 1	(A) A master's degree or higher from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 2	A master's degree or higher from an accredited college or university.	Two years of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 3	A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 4	A bachelor's degree from an accredited college or university.	Three years of documented full-time work experience in a residential child-care operation, or related field of child and family services.

Figure: 40 TAC §748.563(c)

Options:	Educational Qualifications:	Professional Qualifications:
Option 1	A bachelor's degree from an accredited college or university.	No qualifications are needed if the professional level service provider is directly supervised by a service provider who meets one of the qualifications in subsection (a) or (b) of this section.
Option 2	Educational requirements for a Licensed Child-Care Administrator.	Child-Care Administrator's License.

Figure: 40 TAC §748.1003

How many children at your operation are receiving treatment services?	At least one child is younger than 5 years old, then a single caregiver can care for the following number of children during waking hours:	All children are 5 years old or older, then a single caregiver can care for the following number of children during waking hours:
(1) If less than 25 children and less than 30% of your total population of children in care are receiving treatment services, and	4	8
(2) If 25 or more children or 30% or more of your total population of children in care are receiving treatment services, and	4	5

Figure: 40 TAC §748.1007

For caregivers that stay awake or sleep during sleeping hours, how many children at your operation are receiving treatment services?	At least one child is younger than 5 years old, then a single caregiver can care for the following number of children during sleeping hours:	All children are 5 years old or older, then a single caregiver can care for the following number of children during sleeping hours:
(1) For caregivers that stay awake during sleeping hours, if less than 25 children and less than 30% of your total population of children in care are receiving treatment services, and	8	24
(2) For caregivers that sleep during sleeping hours, if less than 25 children and less than 30% of your total population of children in care are receiving treatment services, and	4	16
(3) For caregivers that stay awake during sleeping hours, if 25 or more children or 30% or more of your total population of children in care are receiving treatment services, and	6	15
(4) For caregivers that sleep during sleeping hours, if 25 or more children or 30% or more of your total population of children in care are receiving treatment services, and	4	10

Figure: 40 TAC §748.1219

If:	Then:
(1) You intend to provide treatment services for a child with an emotional disorder or pervasive development disorder	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic evaluation including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
(2) You intend to provide treatment services for a child with mental retardation	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months of the date of admission.</p> <p>(i) A licensed psychologist who has experience with mental retardation or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of mental retardation as defined in the current addition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>

<p>(3) You intend to provide treatment services for a child with primary medical needs</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. The physician's evaluation must confirm that the child can be cared for appropriately in the operation.</p> <p>(B) The written orders must include orders for:</p> <ul style="list-style-type: none"> (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior indicates that the child is an immediate danger to himself or others</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic evaluation including:</p> <ul style="list-style-type: none"> (i) The child's diagnosis; (ii) An assessment of the child's needs and danger to himself or others; and (iii) Recommendations for care, treatment, and further evaluation. <p>(B) If the child is:</p> <ul style="list-style-type: none"> (i) Coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission. (ii) Not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission. <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

Figure: 40 TAC §748.1337(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training; (vi) Plans for social, recreation, and leisure activities; (vii) Plans for integrating the child into the community and community activities, as appropriate; (viii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and (ix) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) Level of supervision required; (ii) Discipline techniques; (iii) Behavior intervention techniques; (iv) Plans for trips and visits away from the operation; and (v) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, psychiatric care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction;

Type of Service	Items that must be included:
	<p>(F) For children 16 years old and older, preparation for independent living;</p> <p>(G) For children who exhibit high risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</p> <p>(i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and</p> <p>(ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained;</p> <p>(H) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(I) Plans for discharge;</p> <p>(J) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(K) The date the service plan was developed and completed;</p> <p>(L) The effective date of the service plan; and</p> <p>(M) The signatures of the service planning team members that were involved in the development of the service plan.</p>
(2) Treatment services	<p>(A) The child-care service planning requirements noted above;</p> <p>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</p> <p>(C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting;</p> <p>(D) Special treatment program and other services and activities that are planned to help the child achieve and to function in a less restrictive setting, including any plans to implement recommendations from psychological, medical, or dental evaluations; and</p> <p>(E) The names and roles of the service planning team members and other persons who participated in the development of the service plan.</p>
(3) Treatment services for children with mental retardation	<p>(A) The child-care service planning requirements noted above;</p> <p>(B) The treatment services planning requirements noted above;</p> <p>(C) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development;</p> <p>(D) A list of special emotional, physical, and social needs and plans to obtain appropriate professional consultation and treatment for those needs;</p> <p>(E) An educational or training plan encouraging normalization appropriate to the child's functioning;</p> <p>(F) Career planning for older adolescents who are not receiving treatment services for severe or profound mental retardation; and</p> <p>(G) Plans to implement the psychologist's evaluation and recommendations.</p>

Type of Service	Items that must be included:
(4) Transitional living program	<p>(A) Child-care service planning requirements;</p> <p>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</p> <p>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</p> <p>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</p> <p>(E) Money management and assisting the child in establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>

Figure: 40 TAC §748.1345

Type of Treatment Service	The roles of professional level service providers in service planning include:
(1) Emotional disorder and pervasive development disorder	(A) Reviewing the child's diagnoses; (B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses; (C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and (D) Reviewing any medications prescribed for a child with special review of psychotropic medications; the presence or absence of medication side effects, including the effects of the medications on the child's behavior; laboratory findings; and any reason the child should not use a medication.
(2) Mental retardation	(A) Assessing the child's educational needs and progress toward meeting those needs; (B) Ensuring coordination between educators, caregivers, operation employees, and other professionals involved in the child's treatment; and (C) Providing information to the education system on the strategies and techniques used with the child in the operation.
(3) Primary medical needs	(A) Reviewing medications prescribed for a child; (B) Recommending special equipment needed by a child; and (C) Reviewing special instructions and training to caregivers for the daily care of the child.

Figure: 40 TAC §748.1381

Type of Service	Review and Update
(1) Child-care services	At least 180 days from the date of the child's last service plan.
(2) Treatment services for emotional disorder, pervasive developmental disorder, or primary medical needs	At least 90 days from the date of the child's last service plan.
(3) Treatment services for mental retardation	In the first year of care, the plan must be reviewed at least every 180 days from the date of the child's last service plan. The plan must be reviewed annually thereafter.

Figure: 40 TAC §748.2501

Type of Emergency Behavior Intervention	(A) Are written orders required to administer the intervention for a specific child?	(B) Who can write orders for the use of the intervention for a specific child?
(1) Short personal restraint	(A) NO.	(B) Not applicable.
(2) Personal restraint	(A) NO.	(B) Not applicable.
(3) Emergency medication	(A) YES.	(B) A licensed physician.
(4) Seclusion	(A) YES, except written orders are not required when you provide emergency care services to the child placed in seclusion.	(B) A licensed psychiatrist, psychologist, or physician.
(5) Mechanical restraint	(A) YES.	(B) A licensed psychiatrist.

Figure: 40 TAC §748.2507

Type of Emergency Behavior Intervention	Conditions:
(1) Short personal restraint	Not applicable, because short personal restraints do not require orders.
(2) Personal restraint	<p>Note: Continuation Orders are required for extending the maximum amount of time for a personal restraint; and an Order or recommendation from the service planning team is needed to forestall some triggered reviews.</p> <p>(A) The licensed psychiatrist or psychologist must review PRN orders for personal restraint at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.</p> <p>(B) PRN orders may not be used to restrain a child beyond the maximum length of time for personal restraint. See §748.2801 of this title (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).</p>
(3) Emergency medication	The licensed physician must review PRN orders for emergency medication at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.
(4) Seclusion	<p>(A) A licensed psychiatrist ordering seclusion is permitted to use PRN orders; however, a licensed psychologist is not.</p> <p>(B) PRN orders may not be used to seclude a child beyond the maximum length of time for seclusion. See §748.2801 of this title.</p> <p>(C) The psychiatrist must review PRN orders for seclusion at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.</p>
(5) Mechanical restraint	PRN orders are not permitted.

Figure: 40 TAC §748.2553

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine hold; (C) As soon as the child's behavior is no longer a danger to himself or others, the medication was administered, or the child is no longer damaging property; or (D) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) Immediately when an emergency health situation occurs during the seclusion. The caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for seclusion is reached; (E) If the child falls asleep in seclusion. In this situation, the caregiver must: (i) Unlock the door; (ii) Continuously observe the child until he awakens; and (iii) Evaluate his overall well-being; or (F) If the child is receiving emergency care services: (i) As soon as the child is no longer a danger to himself or others; (ii) Upon the arrival of a medical professional; or (iii) Upon assistance from law enforcement or the fire department.
(5) Mechanical restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for mechanical restraint is reached; or (E) If the child falls asleep in the mechanical restraint. In this situation, the caregiver must release the child from the restraint and continuously observe the child until he awakens and evaluate him.

Figure: 40 TAC §748.2801

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour. (C) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.
(5) Mechanical restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.

Figure: 40 TAC §748.2805

Type of Emergency Behavior Intervention	The maximum length of time:
(1) Short personal restraint	May not be exceeded.
(2) Personal restraint	May be exceeded if the caregiver obtains a written continuation order before the end of the time period from a licensed psychiatrist with written clinical justification: <ul style="list-style-type: none"> (A) Indicating that the emergency situation continues to exist; and (B) For the length of time he permits the child to be restrained.
(3) Emergency medication	Not applicable.
(4) Seclusion	May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist, psychologist, or physician with written clinical justification: <ul style="list-style-type: none"> (A) Indicating that the emergency situation continues to exist; and (B) For the length of time he permits the child to be secluded.
(5) Mechanical restraint	May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist with written clinical justification: <ul style="list-style-type: none"> (A) Indicating that the emergency situation continues to exist; and (B) For the length of time he permits the child to be restrained, which must not exceed 12 hours.

Figure: 40 TAC §748.2901

Types of Emergency Behavior Intervention	Circumstances that trigger a review:
(1) Short personal restraint	Not applicable, because short personal restraints are not monitored.
(2) Personal restraint	(A) The same child is personally restrained four times within a seven-day period, unless there is a written order by a licensed psychiatrist or psychologist or service planning team recommendation that allows the use of four or more restraints on that child within the seven-day time period. A service planning team recommendation must include the same written information as an order. See §748.2505 of this title (relating to What information must a written order include?). (B) The same child is personally restrained more often than the written order or service planning team recommendation allows.
(3) Emergency medication	Emergency medication is used on the same child three times in a 30-day period.
(4) Seclusion	(A) The seclusion of the same child continues for more than 12 hours; or (B) The same child is secluded three times in a seven-day period.
(5) Mechanical restraint	(A) The mechanical restraint of the same child continues for more than three hours; or (B) The same child is mechanically restrained three times in a seven-day period.

Figure: 40 TAC §748.3701(e)

Types of service	The caregivers must:
(1) Child-care services	(A) Ensure that opportunities to participate in community activities, such as school sports or other extracurricular school activities, church activities, or local social events, are available to the child; and (B) Organize activities, including family activities, that identify, recognize, and reinforce the support that is available to the child.
(2) Treatment services	(A) Meet the requirements in paragraph (1)(A) of this chart; (B) Ensure the activities are designed to meet the child's therapeutic, developmental, and medical needs; (C) Ensure that the therapeutic value of each activity, based on the child's service plan, is documented; (D) Ensure that medical and physical support are given if the recreational and leisure-time activities require it for a child who has primary medical needs, a pervasive developmental disorder, or mental retardation; (E) Ensure that each child has an individualized recreation plan designed by the service planning team or professionals who are qualified to address the child's individual needs; and (F) Ensure that the plan is implemented and revised by the service planning team, as needed.

Figure: 40 TAC §748.3757(a)

If the age of the youngest child is...	Then you must have one adult to supervise every (number) child/ren in the group	Swimming Child/Adult Ratio
0 to 23 months old	1	1:1
2 years old	2	2:1
3 years old	3	3:1
4 years old	4	4:1
5 years old or older	8	8:1

Figure: 40 TAC §748.4041(d)

If the child is...	Then the child must be secured in...
(1) Younger than one year old or weighs less than 20 pounds	a rear-facing infant safety seat system according to the manufacturer's instructions that come with the seat.
(2) At least one year old or weighs between 20 and 40 pounds	a child passenger safety seat system according to the manufacturer's instructions that come with the seat.
(3) Younger than five years old and less than 36 inches in height	a child passenger safety seat system or booster seat.
(4) Younger than five years old and at least 36 inches in height	a booster seat or properly fitting safety belt.
(5) At least five years old, or at least 36 inches	a seat belt.

Figure: 40 TAC §749.133

Change:	Deadline for notifying us:
(1) The legal structure of your agency	At least seven working days before making the change
(2) The composition of the governing body	Within 15 days of such a change
(3) The information about governing body officers, executive committee, or members, such as name or location changes	Within 15 days of learning about a change

Figure: 40 TAC §749.503(a)

Serious Incident	(i) To Licensing?	(i) To Parents?	(i) To Law enforcement?
	(ii) If so, when?	(ii) If so, when?	(ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately	(C)(i) YES (C)(ii) Immediately
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not applicable
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse is: physical injury that results in substantial bodily harm and requiring emergency medical treatment, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial bodily harm to the child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable

(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable
(6) A child is indicted, charged, or arrested for a crime.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(7) A child developmentally or chronologically under 6 years old is absent from a foster home and cannot be located.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(8) A child developmentally or chronologically 6 to 12 years old is absent from a foster home and cannot be located.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.

(9) A child 13 years old or older is absent from a foster home and cannot be located.	<p>(A)(i) YES</p> <p>(A)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>	<p>(B)(i) YES</p> <p>(B)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>	<p>(C)(i) YES</p> <p>(C)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>
(11) A suicide attempt by a child.	<p>(A)(i) YES</p> <p>(A)(ii) As soon as you become aware of the incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as you become aware of the incident.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>

Figure: 40 TAC §749.507

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any occurrence that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.
(3) Offering new services, such as treatment services, assessment services, or a transitional living program.	(A)(i) YES, in writing. (A)(ii) Before the services are offered, because Licensing must approve the new services before they may be offered.	(B)(i) NO (B)(ii) Not applicable
(4) Changes in written policies that are required by Licensing.	(A)(i) YES, in writing. (A)(ii) Before the changes to the policies are implemented, because Licensing must approve the changes before they may be implemented.	(B)(i) NO (B)(ii) Not applicable

(5) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(6) An allegation that a person under the auspices of your child-placing agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(7) An investigation of abuse or neglect by any other entity other than Licensing of an employee, contract staff, volunteer, or other adult at the agency.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(8) An arrest or indictment, or a county or district attorney accepts information regarding an official complaint, against an employee, contract staff, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.
(9) Changing your child-placing agency administrator.	(A)(i) YES, in writing. (A)(ii) Within seven days after the action is taken.	(B)(i) NO (B)(ii) Not applicable.

Figure: 40 TAC §749.513

Serious incident	Documentation
(1) Child death, suicide attempt, or a critical injury reportable under §749.503(a)(2) of this title (relating to When must I report and document a serious incident involving a child in my care?).	Any emergency behavior intervention implemented on the child within 48 hours prior to the serious incident.
(2) Any critical injury reportable under §749.503(a)(2) of this title that resulted from a short personal restraint.	Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.
(3) Child absent without permission.	(A) Any efforts made to locate the child; (B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child's absence and subsequent location or return to the foster home; and (C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child's absence and subsequent location or return to the foster home.
(4) Any abusive behavior among children reportable under §749.503(a)(4) or (5) of this title.	The difference in size, age, and developmental level of the children involved in the abusive behavior.

Figure: 40 TAC §749.673

Options for qualifications:	Educational qualifications:	Professional qualifications:
Option 1	(1)(A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 2	(2) A master's degree from an accredited college or university.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 3	(3) A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 4	(4) A bachelor's degree from an accredited college or university.	(A) Three years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or (B) Direct supervision from a person fully qualified to conduct child-placement management activities. The direct supervision must consist of 10 documented, monthly, face-to-face, individual, case-related conferences with the child-placement staff. The direct supervision must continue until the employee's previous experience and directly supervised experience totals three years.

Figure: 40 TAC §749.675

Options for qualifications:	A license in social work or another human services field:	Educational qualifications:	Professional qualifications. Any field placement or practicum experience may not be counted:
Option 1	Yes	(A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	Two years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management staff activities.
Option 2	No	(A) A master's degree from an accredited college or university; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	Three years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.
Option 3	Yes	(A) A bachelor's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Four years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.
Option 4	No	(A) A bachelor's degree from an accredited college or university; and (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Five years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.

Figure: 40 TAC §749.863(a)

Who is required to receive the training?	What type of pre-service training?	How many hours of training are needed?	When must the training be completed?
(1) All caregivers	General pre-service training	8 hours	Before this person can be the only caregiver for a group of children
(2) Caregivers caring for children receiving only child care services and/or programmatic services	Pre-service training regarding emergency behavior intervention	8 hours	Before this person can be the only caregiver for a group of children
(3) Caregivers caring for children receiving treatment services	Pre-service training regarding emergency behavior intervention	16 hours	Before this person can be the only caregiver for a group of children
(4) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers	Pre-service training regarding emergency behavior intervention	8 hours	Before beginning job duties

Figure: 40 TAC §749.931

Who is required to receive the annual training?	How many hours of annual training are needed?
(1) Caregivers caring for children receiving only child-care services and/or programmatic services	20 hours, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency.
(2) Caregivers caring for children receiving treatment services	<p>(A) For homes with two or more foster parents, the foster parents must receive a total of 50 hours of annual training, of which eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency. These 50 hours must be distributed appropriately, and each foster parent must receive some amount of training.</p> <p>(B) For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(C) All other caregivers, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p>
(3) Caregivers caring only for children with primary medical needs that are receiving treatment services	<p>(A) For homes with two or more foster parents, the foster parents must receive a total of 50 hours of annual training. These 50 hours must be distributed appropriately, and each foster parent must receive some amount of training.</p> <p>(B) For homes with one foster parent, 30 hours.</p> <p>(C) All other caregivers, 30 hours.</p>
(4) Child placement staff with less than one year child-placing experience	<p>(A) 30 hours.</p> <p>(B) After the initial year, 20 hours.</p> <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>
(5) Child placement staff with one year child-placing experience	20 hours. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(6) Child placement management staff	20 hours. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.

<p>(7) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers</p>	<p>(A) Persons who hold a relevant professional license must receive the annual training necessary to maintain that license. As long as the person receives at least 15 hours of annual training, the person is not required to have any additional hours of annual training.</p> <p>(B) Persons who do not hold a relevant professional license must earn at least 30 hours of annual training.</p> <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>
--	--

Figure: 40 TAC §749.1135

If:	Then:
(1) You intend to provide treatment services for a child with an emotional disorder or pervasive development disorder	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic evaluation, including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
(2) You intend to provide treatment services for a child with mental retardation	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months of the date of admission.</p> <p>(i) A licensed psychologist who has experience with mental retardation or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of mental retardation as defined in the current addition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>

<p>(3) You intend to provide treatment services for a child with primary medical needs</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. The physician's evaluation must confirm that the child can be cared for appropriately by the agency.</p> <p>(B) The written orders must include orders for:</p> <ul style="list-style-type: none"> (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior indicates that the child is an immediate danger to himself or others</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic evaluation including:</p> <ul style="list-style-type: none"> (i) The child's diagnosis; (ii) An assessment of the child's needs and danger to himself or others; and (iii) Recommendations for care, treatment, and further evaluation. <p>(B) If the child is:</p> <ul style="list-style-type: none"> (i) Coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission. (ii) Not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission. <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

Figure: 40 TAC §749.1309(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training; (vi) Plans for social, recreation, and leisure activities; (vii) Plans for integrating the child into the community and community activities, as appropriate; (viii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and (ix) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) Level of supervision required; (ii) Discipline techniques; (iii) Behavior intervention techniques; (iv) Plans for trips and visits away from the agency; and (v) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, psychiatric care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction;

	<p>(F) For children 16 years old and older, preparation for independent living;</p> <p>(G) For children who exhibit high risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</p> <p>(i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and</p> <p>(ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained;</p> <p>(H) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(I) Plans for discharge;</p> <p>(J) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(K) The date the service plan was developed and completed;</p> <p>(L) The effective date of the service plan; and</p> <p>(M) The signatures of the service planning team members that were involved in the development of the service plan.</p>
(2) Treatment services	<p>For children receiving treatment services, the plan must address all of the child's waking hours and include:</p> <p>(A) The child-care service planning requirements noted above;</p> <p>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</p> <p>(C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting;</p> <p>(D) Special treatment program and other services and activities that are planned to help the child achieve and to function in a less restrictive setting, including any plans to implement recommendations from psychological, medical, or dental evaluations; and</p> <p>(E) The names and roles of the service planning team members and other persons who participated in the development of the service plan.</p>
(3) Treatment services for children with mental retardation	<p>(A) The child-care service planning requirements noted above;</p> <p>(B) The treatment services planning requirements noted above;</p> <p>(C) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development;</p> <p>(D) A list of special emotional, physical, and social needs and plans to obtain appropriate professional consultation and treatment for those needs;</p> <p>(E) An educational or training plan encouraging normalization appropriate to the child's functioning;</p> <p>(F) Career planning for older adolescents who are not receiving treatment services for severe or profound mental retardation; and</p> <p>(G) Plans to implement the psychologist's evaluation and recommendations.</p>

<p>(4) Transitional living program</p>	<p>(A) Child-care service planning requirements;</p> <p>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</p> <p>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</p> <p>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</p> <p>(E) Money management and assisting the child in establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>
--	---

Figure: 40 TAC §749.1317

Type of Treatment Service	The roles of professional service providers in service planning include:
(1) Emotional disorder and pervasive development disorder	(A) Reviewing the child's diagnoses; (B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses; (C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and (D) Reviewing any medications prescribed for a child with special review of psychotropic medications; the presence or absence of medication side effects, including the effects of the medications on the child's behavior; laboratory findings; and any reason the child should not use a medication.
(2) Mental retardation	(A) Assessing the child's educational needs and progress toward meeting those needs; (B) Ensuring coordination between educators, caregivers, agency employees, and other professionals involved in the child's treatment; and (C) Providing information to the education system on the strategies and techniques used with the child in the agency.
(3) Primary medical needs	(A) Reviewing any medications prescribed for a child; (B) Recommending any special equipment needed by a child; and (C) Reviewing special instructions and training to caregivers for the daily care of the child.

Figure: 40 TAC §749.1331

Type of Service	Review and Update
(1) Child-care services	At least 180 days from the date of the child's last service plan.
(2) Treatment services for emotional disorder, pervasive developmental disorder, or primary medical needs	At least 90 days from the date of the child's last service plan.
(3) Treatment services for mental retardation	In the first year of care, the plan must be reviewed at least every 180 days from the date of the child's last service plan. The plan must be reviewed annually thereafter.

Figure: 40 TAC §749.1921(e)

Service Type	The caregivers must:
(1) Child-Care Services	(A) Ensure that opportunities to participate in community activities, such as school sports or other extracurricular school activities, church activities, or local social events, are available to the child; (B) Organize family activities, church activities, or local social events that are available to the child; and (C) Ensure the activities are designed to meet the child's therapeutic, developmental, and medical needs;
(2) Treatment Services	(A) Meet the requirements in paragraph (1)(A) of this chart; (B) Ensure and document the activities that the child's service plan designated as therapeutic; (C) Ensure that medical and physical support is given a child who has primary medical needs or is diagnosed with mental retardation, as needed; and (D) Ensure that the written plan is implemented and revised by the service planning team as needed.

Figure: 40 TAC §749.2101

Type of Emergency Behavior Intervention	(A) Are written orders required to administer the intervention for a specific child?	(B) Who can write orders for the use of the intervention for a specific child?
(1) Short personal restraint	(A) NO.	(B) Not applicable.
(2) Personal restraint	(A) NO.	(B) Not applicable.
(3) Emergency medication	(A) YES.	(B) A licensed physician.

Figure: 40 TAC §749.2107

Type of Emergency Behavior Intervention	Conditions:
(1) Short personal restraint	Not applicable, because short personal restraints do not require orders.
(2) Personal restraint	(A) The licensed psychiatrist or psychologist must review PRN orders for personal restraint at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record. (B) PRN orders may not be used to restrain a child beyond the maximum length of time for personal restraint. See §749.2281 of this title (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).
(3) Emergency medication	The licensed physician must review PRN orders for emergency medication at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.

Figure: 40 TAC §749.2153

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine hold; (C) As soon as the child's behavior is no longer a danger to himself or others, the medication was administered, or the child is no longer damaging property; or (D) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.

Figure: 40 TAC §749.2281

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour. (C) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.

Figure: 40 TAC §749.2283

Type of Emergency Behavior Intervention	The maximum length of time:
(1) Short personal restraint	May not be exceeded.
(2) Personal restraint	May be exceeded if the caregiver obtains a written continuation order before the end of the time period from a licensed psychiatrist with written clinical justification: (A) Indicating that the emergency situation continues to exist; and (B) For the length of time he permits the child to be restrained.
(3) Emergency medication	Not applicable.

Figure: 40 TAC §749.2331

Types of Emergency Behavior Intervention	Circumstances that trigger a review:
(1) Short personal restraint	Not applicable, because short personal restraints are not monitored.
(2) Personal restraint	(A) The same child is personally restrained four times within a seven-day period, unless there is a written order by a licensed psychiatrist or psychologist or service planning team recommendation that allows the use of four or more restraints on that child within the seven-day time period. A service planning team recommendation must include the same written information as an order. See §749.2105 of this title (relating to What information must a written order include?). (B) The same child is personally restrained more often than the written order or service planning team recommendation allows.
(3) Emergency medication	Emergency medication is used on the same child three times in a 30-day period.

Figure: 40 TAC §749.2447

Required Information	Description of Discussion, Assessment and Documentation Requirements
(1) The age of the prospective foster parents. Ages of all other members of the household.	All prospective foster parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the ages of the foster parents.
(2) The educational level of the prospective foster parents.	You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following: (A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. TEA or other public education entity outside of Texas must recognize the high school program or high school equivalent program; or (B) Have a screening program that: (i) Ensures that each foster parent is able to be an appropriate role model for children in placement; (ii) Ensures that each foster parent is able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and (iii) Addresses adequately basic competencies that would otherwise be met by a high school diploma or G.E.D. including basic reading, writing, and math.
(3) Personal characteristics.	You must document information from foster parents that demonstrate: (A) Emotional stability, good character, good health, and adult responsibility; and (B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.
(4) History of marital relationships including any previous marriages.	You must document information about any previous marriages, divorces, or deaths of former spouses. Foster parents and caregivers must demonstrate the ability to form and sustain adult relationships.
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents and whether they are legal or illegal immigrants.
(6) The financial status of the prospective foster family.	Information on the family's income must be verified and documented.

(7) The results of the criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.	Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The results of those checks must be documented in the foster home record and the home study.
(8) The prospective foster parents' motivation to provide foster care.	Assess and document the prospective foster parents' motivation to provide foster care.
(9) Health status of all persons living in the home.	Document information about the physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations.
(10) The quality of marital and family relationships.	Describe, address, and document the quality of marital and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to foster children placed in the home. You must discuss and assess the quality of the relationships between foster parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home.
(11) The prospective foster parents' feelings about their childhoods and parents.	Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.
(12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.	Evaluate and document prospective foster parents on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if the foster parents religious beliefs prohibit certain medical treatment.

<p>(13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.</p>	<p>Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods.</p>
<p>(14) The prospective foster parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.</p>	<p>Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If the prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.</p>
<p>(15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families.</p>	<p>Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.</p>
<p>(16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.</p>	<p>Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including those parents who abused or neglected the child. Discuss and assess their sensitivity and reactions to the biological parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the potential foster parents' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family including their support for contacts between the child and his family.</p>

(17) The attitude of other household members about the prospective foster parents' plan to provide foster care.	Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of children, their attitudes toward foster children, and their acceptance of the verification as a foster family.
(18) The attitude of the prospective foster parents' extended family regarding foster care.	Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children.
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to the foster family and the support they may receive from these resources.
(20) The prospective foster parents' expectations of and plans for foster children.	Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	Discuss, assess, and document the prospective foster family's ability to work with specific behaviors, backgrounds, special needs and/or disabilities, and other characteristics of foster children.
(22) Background information from other child-placing agencies.	Request and assess the following background information (if provided) from any child-placing agency that previously conducted foster or adoptive screenings or home studies: (A) The home screening, home study, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Any record of deficiencies and their resolutions; and (D) The most current fire and health inspections.

Figure: 40 TAC §749.2559

If the home cares for:	Then the number of children one caregiver may care for is:
One child under age 5	One caregiver to five children
More than two children receiving treatment services (for children with primary medical needs, see below)	One caregiver to four children
One child with primary medical needs	One caregiver to four children

Figure: 40 TAC §749.2563

If the home cares for:	Then the number of children one caregiver may care for is:
One child under age 5	One caregiver to five children
More than two children receiving treatment services (except for children with primary medical needs, see below)	One caregiver to four children
One child with primary medical needs	One caregiver to four children

Figure: 40 TAC §749.2655

Change:	Time for notification:
(1) In the location of the foster home.	Before moving.
(2) Major life changes in household composition: (A) Marriage, divorce, separation, death, birth, or any other change in household composition; (B) A serious health problem that affects the ability of the foster parent to care for children; or (C) Extended absences by one parent, such as military services or job assignments.	Before the change occurs, if possible; otherwise, immediately upon discovery.
(3) A change affecting a condition of the verification.	Before the change occurs, if possible; otherwise, immediately upon discovery.

Figure: 40 TAC §749.3137(a)

If the age of the youngest child is...	Then you must have one adult to supervise every (number) child/ren in the group:	Swimming Child/Adult Ratio
0 to 23 months old	1	1:1
2 years old	2	2:1
3 years old	3	3:1
4 years old	4	4:1
5 years old or older	8	8:1

Figure: 40 TAC §749.3391

Type of Information:	Including:
(1) Abuse or neglect:	Physical, sexual, or emotional abuse.
(2) Health history:	(A) Current health status; (B) Birth history; (C) Neonatal history; (D) Other medical, psychological, or psychiatric history, including any medication history; (E) Dental history; (F) Immunization record; and (G) Available results of any medical, psychological, psychiatric, and dental examinations.
(3) Social history:	Information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child.
(4) Educational history:	(A) Enrollment and performance in educational institutions; (B) Results of educational testing and standardized tests; and (C) Special educational needs, if any.
(5) Family history:	Information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members: (A) Health and medical history, including any information obtained in the medical history report and information regarding genetic diseases or disorders; (B) Current health status; (C) If deceased, cause of and age of death; (D) Height, weight, eye, and hair color; (E) Nationality and ethnic backgrounds; (F) General levels of educational and professional achievements; (G) Religious backgrounds; (H) Results of any psychological, psychiatric, or social evaluations, including the date of any such evaluation, any diagnosis, and a summary of any findings; (I) Any criminal conviction record relating to the following: (i) A misdemeanor or felony classified as an offense against the person or family; (ii) A misdemeanor or felony classified as public indecency; or (iii) A felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and (J) Any information necessary to determine whether the child is entitled to, or otherwise eligible for, state or federal financial, medical, or other assistance.

Figure: 40 TAC §749.3425(a)

If the child:	Then you must have:
(1) Is under the age of two years old and does not need treatment services:	A minimum of five contacts with the child and the adoptive parents within the first six months of placement: (A) Two of the contacts must be face-to-face with the entire prospective adoptive family; and (B) At least one of the two contacts noted above must be in the adoptive home.
(2) Needs treatment services or is two years old or older:	Monthly face-to-face contacts with the adoptive family during the first six months: (A) Four of the contacts face-to-face must be with at least one of the adoptive parents; and (B) Two of the face-to-face contacts must be in the adoptive home with all members of the adoptive family.

Figure: 40 TAC §749.3623

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(1) The age of the adoptive applicants.	All adoptive applicants must be at least 21 years or older. You must include documentation verifying their age.
(2) The marital status of the adoptive applicants including any previous marriages.	If the adoptive applicants are married, you must review and document the marriage license or declaration of marriage record. You must document information about any previous marriages, divorces, or deaths of former spouses.
(3) A history of the adoptive applicants' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the adoptive applicants and whether they are legal or illegal immigrants.
(4) The financial status of the adoptive applicants.	Adoptive applicants must be able to meet the child's basic material needs. You must include the family's ability to support a child, employment history, income, expenses, and ability to manage money. You must verify income and insurance coverage.
(5) The results of the criminal history and central registry background checks conducted on the adoptive applicants and any non-client person 14 years of age or older who regularly or frequently stays or works in the home.	Persons applying to adopt children through a child-placing agency, and any non-client person 14 years of age or older who will regularly or frequently be staying or be present at the home while children are being provided care, must obtain a criminal history and central registry background check (See Chapter 745, Subchapter F, of this title (relating to Background Checks)). The results of those checks must be documented in the adoptive home record and the home study.
(6) Health status of the adoptive applicants.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt a child and to assume parenting responsibilities. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations or through a physician's statement. Consideration must be given to the health and age of the adoptive applicants. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive applicants.	A person must not be prohibited from adopting a child solely based on a disability. You must evaluate individuals who are disabled in relation to their adjustment to the disability and any limits the disability imposes on the adoptive applicants' ability to care for a child. This evaluation must be documented in the home study.

(8) The adoptive applicants' motivation for adoption.	Discuss and assess the adoptive applicants' motivation for adoption. You must assess the applicants' motivation and its effect on their ability to accept and parent an adopted child.
(9) The fertility of the adoptive applicants.	Discuss and assess information about the couple's fertility. The applicants' fertility is important only in relation to unresolved feelings about their infertility and their ability to accept and parent a child not born to them.
(10) The quality of the adoptive applicants' marital and family relationships.	Describe the quality of marital and family relationships in relation to the family's ability to adopt and parent a child. You must assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to an adopted child. You must assess the quality of the relationships between the parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to an adopted child.
(11) The adoptive applicants' feelings about their childhood and parents.	Discuss and assess adoptive applicants' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of the experiences.
(12) The adoptive applicants' attitude about an adopted child's religion.	Evaluate adoptive applicants on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.
(13) The adoptive applicants' values, feelings, and practices in regard to child care and discipline.	Discuss and assess the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child care practices to conform with your approved methods.

(14) The adoptive applicants' sensitivity to and feelings about children who may have been subjected to abuse and neglect if the agency may place such children with the adoptive parents.	Discuss and assess the adoptive applicants' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the children they may adopt. Assess the adoptive family applicants' ability to help children who have been abused or neglected. If the adoptive applicants experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the applicant's ability to help children deal with their own experiences. Evaluate the availability of family and community resources to meet the needs of the children adopted by the family.
(15) The adoptive applicants' sensitivity to, and feelings for children's experiences of separation from, and the loss of, their biological families.	Discuss and assess the adoptive applicants' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the applicants' acceptance of the process of grief and loss for children and assess their ability to help children through the grieving process.
(16) The adoptive applicants' sensitivity to, and feelings about, a child's biological family.	Discuss the adoptive applicants' feelings about the child's parents, including those parents who abused or neglected the child. Assess their sensitivity and reactions to the birth parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the applicants' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their reactions to the possibility of contacts between the child and his biological family in the future.
(17) The attitude of other family and household members regarding adoption.	Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of children, their attitudes toward the children, and their acceptance of the adoption plan.
(18) The attitude of the adoptive applicants' extended family regarding adoption.	Discuss the extended family's attitude toward adoption and the involvement the family will have with the adopted children. Discuss and assess their involvement in the care of the children, their attitudes toward adoption, and adopted children.
(19) Support systems available to adoptive applicants and adopted children.	Discuss and assess the support systems available to the adoptive family and the support they may receive from these resources.

(20) The adoptive applicants' expectations of and plans for adoptive children.	Discuss and assess the prospective adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) Adoptive applicants' ability to work with specific kinds of behaviors and backgrounds.	Discuss and assess the adoptive applicants' ability to work with and/or willingness to accept specific behaviors, backgrounds, special needs and/or disabilities and other characteristics of children.

Figure: 40 TAC §750.5(a)(1)

Chapter 749 Terminology	Chapter 750 Terminology
(1) Child-placing agency, agency, or foster home	"Foster home" as defined in this chapter.
(2) Foster family home	"Foster family home" as defined in this chapter.
(3) Foster group home	"Foster group home" as defined in this chapter.

Figure: 40 TAC §750.123

Change:	Deadline for notifying us:
(1) The legal structure of your operation	At least seven working days before making the change
(2) The composition of the governing body	Within 15 days of such a change
(3) The information about governing body officers, executive committee, or members, such as name or location changes	Within 15 days of learning about a change.

Figure: 40 TAC §750.1009

Change:	Time for notification:
(1) In the location of the foster home.	Before moving.
(2) Major life changes in household composition: (A) Marriage, divorce, separation, death, birth, or any other change in household composition; (B) A serious health problem that affects the ability of the foster parent to care for children; or (C) Extended absences by one parent, such as military services or job assignments.	Before the change occurs, if possible; otherwise, immediately upon discovery.
(3) A change affecting a condition of the License.	Before the change occurs, if possible; otherwise, immediately upon discovery.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice that Texas Family Code §234.008(d) is Null and Void

Pursuant to §234.008(e) of the Texas Family Code, notice is hereby given by the Office of the Attorney General, Child Support Division, as the Title IV-D agency, that Texas Family Code §234.008(d) is null and void.

Texas Family Code §234.008(e) states that, if the Title IV-D agency is notified by the Federal Office of Child Support Enforcement that Subsection (d) results in the Title IV-D agency's failure to meet the requirements of 42 U.S.C. Sections 654a(e) and 654b related to the establishment and operations of the state case registry and state disbursement unit, Subsection (d) is null and void; and the Title IV-D agency shall publish in the *Texas Register* notice that Subsection (d) is not effective.

On February 16, 2006, The Federal Office of Child Support Enforcement notified the Office of the Attorney General, Child Support Division, that H.B. 1238, effective September 1, 2005, codified as Texas Family Code §234.008(d), is in violation of the requirements of Title IV-D of the Social Security Act, §454B and §457 as well as §454(11)(A) and §454(11)(B), related to the establishment and operation of the state case registry and state disbursement unit. Title IV-D of the Social Security Act §454 and §457 corresponds to 42 U.S.C. §654 and §657, related to the establishment and operation of the state case registry and state disbursement unit.

Texas Family Code §234.008(d) is not effective. Subsection (d) states:

Subject to Subsection (e), the signature of an obligee on a final order in a suit affecting the parent-child relationship, or another order under this title, that designates an individual or entity for the purpose of receiving, disbursing, and monitoring child support payments constitutes written consent by the obligee to the distribution of the child support payments by the state disbursement unit to the designated individual or entity. The state disbursement unit shall distribute each child support payment to the designated individual or entity by the date required by Subsection (a). The designated individual or entity shall deduct any amount of the individual's or entity's authorized fee from the payment and promptly disburse the remainder of the amount to the Title IV-D agency or obligee.

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200601391
Lauri Saathoff
Deputy Attorney General
Office of the Attorney General
Filed: March 3, 2006

Comptroller of Public Accounts

Notice of Award

Pursuant to Chapter 403 and Chapter 2156, the Comptroller of Public Accounts (Comptroller) announces the following contract awards:

The notice of request for proposals was published in the May 6, 2005 issue of the *Texas Register* at 30 TexReg 2784 (RFP #172e).

The contractors will provide institutional commission recapture brokerage services for the Texas Prepaid Higher Education Tuition Board.

Two (2) contracts were awarded as follows:

1. Abel Noser Corporation, One Battery Park Plaza, Sixth Floor, New York, NY 10004. The total amount of the contract is based on the percentage of commissions generated, recaptured, and reimbursed back to the Comptroller and the Board. The term of the contract is January 26, 2006 through December 31, 2009, with option for 2 additional 1-year renewals; and

2. Lynch, Jones & Ryan, Inc., 14785 Preston Road, Suite 550, Dallas, Texas 75254. The total amount of the contract is based on the percentage of commissions generated, recaptured, and reimbursed back to the Comptroller and the Board. The term of the contract is March 2, 2006 through December 31, 2009, with option for 2 additional 1-year renewals.

TRD-200601381
William Clay Harris
Assistant General Counsel of Contracts
Comptroller of Public Accounts
Filed: March 2, 2006

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/06 - 03/19/06 is 18% for Consumer¹/Agricultural/Commercial² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/13/06 - 03/19/06 is 18% for Commercial over \$250,000.

¹Credit for personal, family, or household use.

²Credit for business, commercial, investment, or other similar purpose.

TRD-200601426
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 7, 2006

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding American Chrome & Chemicals, L.P., Docket No. 2000-0711-MLM-E on 02/10/2006 assessing \$20,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney, at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Feria, Docket No. 2004-0314-MLM-E on 02/10/2006 assessing \$43,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steven and Sheila Agnew dba Heritage Oaks Subdivision, Docket No. 2004-0319-PWS-E on 02/10/2006 assessing \$2,087 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Don English, Docket No. 2004-0585-PWS-E on 02/10/2006 assessing \$3,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Davis, Staff Attorney, at (512) 239-5487, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation dba ExxonMobil Refining & Supply Company, Docket No. 2004-0818-AIR-E on 02/10/2006 assessing \$6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Surepak, L.P., Docket No. 2004-0894-AIR-E on 02/10/2006 assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Llano ISD, Docket No. 2004-1392-PST-E on 02/10/2006 assessing \$3,200 in administrative penalties with \$640 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel S. Boschert, Inc., Docket No. 2004-1408-PST-E on 02/10/2006 assessing \$4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney, at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Daley C. Russell, Jr. dba Russell's Corner Food Mart, Docket No. 2004-1667-PST-E on 02/10/2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Padre Isles Management Corp. dba Padre Isles Country Club, Inc., Docket No. 2004-1760-PST-E on 02/10/2006 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator, at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Foremost Holdings, Inc. dba Dyno-Mart of Mexia, Docket No. 2004-1779-PST-E on 02/10/2006 assessing \$4,200 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator, at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Brenda Ledbetter dba Potters Creek Store, Docket No. 2004-1817-PST-E on 02/10/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney, at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beaumont, Docket No. 2004-1847-MWD-E on 02/10/2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator, at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Hamid Corp. dba Quick Stop 21, Docket No. 2004-2079-PST-E on 02/10/2006 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mount Enterprise, Docket No. 2005-0010-MWD-E on 02/10/2006 assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2005-0071-AIR-E on 02/10/2006 assessing \$6,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-0094-AIR-E on 02/10/2006 assessing \$16,362 in administrative penalties with \$3,272 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al Barkaat Enterprises, Inc. dba Amans Grocery Store, Docket No. 2005-0184-PST-E on 02/10/2006 assessing \$1,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney, at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dan Kwang Kim dba Times Market 121, Docket No. 2005-0279-PST-E on 02/10/2006 assessing \$14,000 in administrative penalties with \$2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hans Hansen dba Hansen Construction, Docket No. 2005-0323-PST-E on 02/10/2006 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining LP, Docket No. 2005-0359-AIR-E on 02/10/2006 assessing \$131,670 in administrative penalties with \$26,334 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company, LP, Docket No. 2005-0406-AIR-E on 02/10/2006 assessing \$7,400 in administrative penalties with \$1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosqueville Green Acres Water Supply Corporation, Docket No. 2005-0480-PWS-E on 02/10/2006 assessing \$1,308 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trimac Transportation, Inc., Docket No. 2005-0511-PST-E on 02/10/2006 assessing \$700 in administrative penalties with \$140 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide America, L.P., Docket No. 2005-0533-MWD-E on 02/10/2006 assessing \$8,700 in administrative penalties with \$1,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Solutia Inc., Docket No. 2005-0555-AIR-E on 02/10/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Muenster, Docket No. 2005-0596-MWD-E on 02/10/2006 assessing \$8,220 in administrative penalties with \$1,644 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Robert Lee, Docket No. 2005-0625-PWS-E on 02/10/2006 assessing \$520 in administrative penalties with \$104 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Hardcastle, SEP Coordinator, at (512) 239-0969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PD Glycol, Docket No. 2005-0633-AIR-E on 02/10/2006 assessing \$12,300 in administrative penalties with \$2,460 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator, at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Zavalla, Docket No. 2005-0672-MWD-E on 02/10/2006 assessing \$8,970 in administrative penalties with \$1,794 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2005-0734-AIR-E on 02/10/2006 assessing \$61,350 in administrative penalties with \$12,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2005-0765-AIR-E on 02/10/2006 assessing \$10,222 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enviroclean Medical Services, Inc., Docket No. 2005-1033-MSW-E on 02/10/2006 assessing \$7,350 in administrative penalties with \$1470 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rayburn Country Municipal Utility District, Docket No. 2005-1072-PWS-E on 02/10/2006 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tristar Convenience Stores, Inc. dba Handi Plus 11, Docket No. 2005-1098-PST-E on 02/10/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator, at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S & J Oil Company Inc. dba Moss Lake Community Store, Docket No. 2005-1126-PST-E on 02/10/2006 assessing \$1,540 in administrative penalties with \$308 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2005-1151-AIR-E on 02/10/2006 assessing \$3,016 in administrative penalties with \$603 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunshine Stores, Inc. dba Sunshine Grocery Silsbee, Docket No. 2005-1155-PST-E on 02/10/2006 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ergon Asphalt & Emulsions, Inc., Docket No. 2005-1163-IWD-E on 02/10/2006 assessing \$1,290 in administrative penalties with \$258 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carbon Silica Partners, L.P., Docket No. 2005-1185-AIR-E on 02/10/2006 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hasan Abdullalif dba Texas Pride, Docket No. 2005-1194-PST-E on 02/10/2006 assessing \$4,280 in administrative penalties with \$856 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bridgeport, Docket No. 2005-1200-PWS-E on 02/10/2006 assessing \$1,310 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator, at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waterco, Inc. dba Deep Water Plantation Water Co., Docket No. 2005-1227-PWS-E on 02/10/2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator, at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2005-1307-AIR-E on 02/10/2006 assessing \$2,184 in administrative penalties with \$437 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ernest Cooper dba County Company Septic Tank and Grease Trap Service, Docket No. 2005-1351-SLG-E on 02/10/2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & D Jacobson Properties, Ltd. dba McFadden & Miller, Docket No. 2005-1364-PST-E on 02/10/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc., Docket No. 2005-1392-PWS-E on 02/10/2006 assessing \$655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alto, Docket No. 2005-1399-MWD-E on 02/10/2006 assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator, at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DSI Transports, Inc., Docket No. 2005-1400-PST-E on 02/10/2006 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Han Yeol Bae dba Times Market 97, Docket No. 2005-1407-PST-E on 02/10/2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rukas Enterprises, Inc. dba Mini Mart, Docket No. 2005-1413-PST-E on 02/10/2006 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Albany, Docket No. 2005-1424-PWS-E on 02/10/2006 assessing \$235 in administrative penalties with \$47 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Alan Boskind dba Oasis Water System, Docket No. 2005-1432-PWS-E on 02/10/2006 assessing \$440 in administrative penalties with \$88 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas J. Green dba Detroit 7-11, Docket No. 2005-1437-PST-E on 02/10/2006 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mullin Independent School District, Docket No. 2005-1439-PWS-E on 02/10/2006 assessing \$2,030 in administrative penalties with \$406 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Taft, Docket No. 2005-1453-MSW-E on 02/10/2006 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator, at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dome Hydrocarbons, L.C., Docket No. 2005-1473-AIR-E on 02/10/2006 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlas Roofing Corporation, Docket No. 2005-1499-AIR-E on 02/10/2006 assessing \$3,050 in administrative penalties with \$610 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hill Country Stop, Inc., Docket No. 2005-1537-PST-E on 02/10/2006 assessing \$2,125 in administrative penalties with \$425 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator, at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TLT Const. Co., Inc., Docket No. 2005-1544-PST-E on 02/10/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Lucky Lady, Docket No. 2005-1569-PST-E on 02/10/2006 assessing \$2,970 in administrative penalties with \$594 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2005-1579-AIR-E on 02/10/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaspar Wire Works Inc., Docket No. 2005-1595-AIR-E on 02/10/2006 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boral Material Technologies Inc., Docket No. 2005-1597-AIR-E on 02/10/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chaparral Energy, L.L.C., Docket No. 2005-1598-AIR-E on 02/10/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & M Water Supply Corporation, Docket No. 2005-1625-MWD-E on 02/10/2006 assessing \$4,110 in administrative penalties with \$822 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teresa Gail Allums dba T & A Septic Service, Docket No. 2005-1635-SLG-E on 02/10/2006 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wholearth Organic Composting, LLC, Docket No. 2005-1687-AIR-E on 02/10/2006 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barjan Products L.L.C. dba Par Products, Docket No. 2005-1722-AIR-E on 02/10/2006 assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dixie Chemical Company, Inc., Docket No. 2005-1734-IWD-E on 02/10/2006 assessing \$2,975 in administrative penalties with \$595 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200601311

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 2, 2006



Enforcement Orders

An agreed order was entered regarding Harris County, Docket No. 2003-1430-MWD-E on 02/24/2006 assessing \$14,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator, at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & K Enterprises, Inc. dba Mini Mart 2, Docket No. 2003-1261-PWS-E on 02/24/2006 assessing \$4,318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator, at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Poteet, Docket No. 2003-1277-MWD-E on 02/24/2006 assessing \$18,275 in administrative penalties with \$3,655 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Schreier, Docket No. 2003-1468-MSW-E on 02/24/2006 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney, at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Preston Club Utility Corporation, Docket No. 2003-0406-MWD-E on 02/24/2006 assessing \$32,500 in administrative penalties with \$6,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator, at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mount Calm, Docket No. 2003-0076-MWD-E on 02/24/2006 assessing \$16,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Czech Catholic Home For The Aged, Docket No. 2003-1360-MWD-E on 02/24/2006 assessing \$6,955 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator, at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, L.P., Docket No. 2004-0209-AIR-E on 02/24/2006 assessing \$23,625 in administrative penalties with \$4,725 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Our Lady of Guadalupe Catholic Church, Docket No. 2004-0302-EAQ-E on 02/24/2006 assessing \$3,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney, at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rod Packard dba Packard Tire Service, Docket No. 2004-0327-MSW-E on 02/24/2006 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galena Park, Docket No. 2004-0554-MWD-E on 02/24/2006 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regional Transportation Authority, Docket No. 2004-0736-PST-E on 02/24/2006 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ram Krupa Corporation, Docket No. 2004-0908-PST-E on 02/24/2006 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hooks, Docket No. 2004-1112-MWD-E on 02/24/2006 assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pool Company Texas LTD., Docket No. 2004-1151-MLM-E on 02/24/2006 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Cross Rentals, Inc. dba Budget Service Center, Docket No. 2004-1177-PST-E on 02/24/2006 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney, at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Conroe Hills Municipal Utility District, Docket No. 2004-1321-MWD-E on 02/24/2006 assessing \$4,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wright Materials, Inc., Docket No. 2004-1400-AIR-E on 02/24/2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding David Watson dba Gew Chevron, Docket No. 2004-1429-PST-E on 02/24/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn Fuller dba Country Village Mobile Home Park, Docket No. 2004-1495-PWS-E on 02/24/2006 assessing \$18,055 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney, at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Porte Methanol Company, L.P., Docket No. 2004-1673-AIR-E on 02/24/2006 assessing \$66,990 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mahakali Group, Inc. dba Alco Food Mart, Docket No. 2004-1731-PST-E on 02/24/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anson, Docket No. 2004-1887-MLM-E on 02/24/2006 assessing \$3,480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator, at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2004-2037-IWD-E on 02/24/2006 assessing \$22,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2004-2052-AIR-E on 02/24/2006 assessing \$4,704 in administrative penalties with \$941 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Liborio Cruces, Docket No. 2004-2107-MSW-E on 02/24/2006 assessing \$15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2005-0077-MSW-E on 02/24/2006 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabrina Investments, Inc. dba Corner Store, Docket No. 2005-0086-PST-E on 02/24/2006 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilco United Services, Inc. dba Rocky Creek Water System, Docket No. 2005-0089-PWS-E on 02/24/2006 assessing \$1,998 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Schenectady International, Inc., Docket No. 2005-0136-AIR-E on 02/24/2006 assessing \$11,450 in administrative penalties with \$2,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sarbali Oil, Inc. dba Pineland Mobil, Docket No. 2005-0428-PST-E on 02/24/2006 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jasper, Docket No. 2005-0444-MWD-E on 02/24/2006 assessing \$9,095 in administrative penalties with \$1,819 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ahmad Sheikh dba Majestic Food Mart, Docket No. 2005-0510-PST-E on 02/24/2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rajeev Khattri dba BJS Food Store, Docket No. 2005-0569-PST-E on 02/24/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fairfield, Docket No. 2005-0576-MWD-E on 02/24/2006 assessing \$17,700 in administrative penalties with \$3,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sheuli Investments, Inc. dba J & S Mart, Docket No. 2005-0652-PST-E on 02/24/2006 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Restivo, Docket No. 2005-0668-MSW-E on 02/24/2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2005-0706-AIR-E on 02/24/2006 assessing \$14,900 in administrative penalties with \$2,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morgan Oil Company, Docket No. 2005-0721-PST-E on 02/24/2006 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding USA Meat and Grain Co., Inc., Docket No. 2005-0749-AIR-E on 02/24/2006 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nucor Corporation, Docket No. 2005-0815-AIR-E on 02/24/2006 assessing \$8,000 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2005-1150-AIR-E on 02/24/2006 assessing \$12,750 in administrative penalties with \$2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2005-1158-PWS-E on 02/24/2006 assessing \$1,965 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator, at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cottonwood Shores, Docket No. 2005-1178-PWS-E on 02/24/2006 assessing \$635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Midway, Docket No. 2005-1226-PWS-E on 02/24/2006 assessing \$635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AT&T Communications, Inc., Docket No. 2005-1240-PST-E on 02/24/2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator, at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Runaway Bay, Docket No. 2005-1248-PWS-E on 02/24/2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator, at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramos Industries, Inc., Docket No. 2005-1252-AIR-E on 02/24/2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hill Sand Company, Inc., Docket No. 2005-1267-WQ-E on 02/24/2006 assessing \$7,850 in administrative penalties with \$1,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Attebury Grain, LLC, Docket No. 2005-1271-AIR-E on 02/24/2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nooruddin Hirani dba King Valley Grocery, Docket No. 2005-1367-PST-E on 02/24/2006 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator, at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shelbyville Water Supply Corporation, Docket No. 2005-1394-PWS-E on 02/24/2006 assessing \$635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victoria Martinez, Docket No. 2005-1404-PST-E on 02/24/2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Von Der Heide dba Drentex Dairy, Docket No. 2005-1411-AGR-E on 02/24/2006 assessing \$3,395 in administrative penalties with \$679 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liberty City Water Supply Corporation, Docket No. 2005-1448-MWD-E on 02/24/2006 assessing \$1,595 in administrative penalties with \$319 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator, at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Texas Pipeline, L.P., Docket No. 2005-1511-AIR-E on 02/24/2006 assessing \$2,125 in administrative penalties with \$425 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Good Time Stores, Inc., Docket No. 2005-1543-AIR-E on 02/24/2006 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District 284, Docket No. 2005-1600-MWD-E on 02/24/2006 assessing \$1,700 in administrative penalties with \$340 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hexion Specialty Chemicals, Inc., Docket No. 2005-1610-AIR-E on 02/24/2006 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2005-1621-AIR-E on 02/24/2006 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frito-Lay, Inc., Docket No. 2005-1622-IWD-E on 02/24/2006 assessing \$6,417 in administrative penalties with \$1,283 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2005-1624-MWD-E on 02/24/2006 assessing \$4,650 in administrative penalties with \$930 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Echo Hill Ranch, Inc. dba Echo Hill Ranch Youth Camp, Docket No. 2005-1648-PWS-E on 02/24/2006 assessing \$1,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator, at (254) 751-0335, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2005-1668-AIR-E on 02/24/2006 assessing \$5,850 in administrative penalties with \$1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gandaf USA, Inc. dba Speedy Mart, Docket No. 2005-1678-PST-E on 02/24/2006 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Mayhew dba Wood Trail Water Supply, Docket No. 2005-1692-PWS-E on 02/24/2006 assessing \$210 in administrative penalties with \$42 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ennis-Tractebel Power Company, LP, Docket No. 2005-1695-AIR-E on 02/24/2006 assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alkarim, Inc. dba Alvin Pantry, Docket No. 2005-1750-PST-E on 02/24/2006 assessing \$3,800 in administrative penalties with \$760 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200601508

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2006



Notice of District Petition

Notice mailed March 1, 2006:

TCEQ Internal Control No. 02152006-D10; Elmer McLester, Trustee (Petitioner) filed a petition for creation of Parkside at Mayfield Ranch Municipal Utility District of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 370.31 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-05-04-14-14D2, effective April 14, 2005, the City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the infor-

mation available at the time, the cost of the project is estimated to be approximately \$30,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea informacion en Espanol, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200601507

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2006



Notice of Meeting on April 27, 2006, in Rogers, Bell County, Texas Concerning the Mineral Wool Insulation Manufacturing Company (Site)

The purpose of the meeting is to obtain public input and information concerning proposal of the site to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2583).

Pursuant to the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the site is located. With this publication, the commission hereby gives notice of a site that the executive director has deter-

mined eligible for listing and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the site identified. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program rule at 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this site was also published on March 16, 2006, in *The Cameron Herald* and on March 17, 2006, in the *Temple Daily Telegram*.

The site proposed for listing is the Mineral Wool Insulation Manufacturing Company, located on Shaw Road in Rogers, Bell County, Texas. The geographic coordinates of the site are Latitude 30 degrees 56 minutes 41.91008 seconds North and Longitude 97 degrees 14 minutes 23.65089 seconds West and the approximate site elevation is 650 feet mean sea level. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The Mineral Wool Insulation Manufacturing Company site began operation in approximately February 1981. It is currently inactive with no known residents or workers on-site. The property is roughly 19 acres in size. Mineral Wool Insulation Manufacturing Company manufactured and produced blow wool and batt wool using blast furnaces from raw material such as slags from copper and antimony smelting, waste from limestone mining, as well as coke and basalts. The raw material was melted in a coke-fired furnace and then extruded by blowing air over spinning drums to form fibers. The residue left in the furnace from the heating of the slags was a metal shot type material. This spent iron shot was the main waste type generated as part of the mineral wool process.

A public meeting will be held April 27, 2006, at 7:00 p.m., at The Civic Center, located at 4 West Mesquite, Rogers, Texas 76569. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the site that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., April 26, 2006, **and should be sent in writing** to Kristian Mauricio, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on April 27, 2006.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Temple Public Library, 100 West Adams Avenue, Temple, Texas 76501, (254) 298-5702, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E,

First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the TCEQ Web site located at www.tceq.state.tx.us/remediation/superfund/index.html.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations, at (800) 633-9363.

TRD-200601430

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 7, 2006



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 17, 2006**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 17, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Bill's Drive Ins, Inc. dba Bill's Drive In; DOCKET NUMBER: 2005-1344-PST-E; TCEQ ID NUMBERS: 36876 and RN103025011; LOCATION: 616 North Wharton Street, El Campo, Wharton County, Texas; TYPE OF FACILITY: convenience store

with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$3,150; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Igloo Products, Corp.; DOCKET NUMBER: 2003-1357-IWD-E; TCEQ ID NUMBER: RN101919280; LOCATION: 1001 West Sam Houston Parkway North, Houston, Harris County, Texas; TYPE OF FACILITY: manufacturing plant; RULES VIOLATED: 30 TAC §305.125(1); Texas Water Code (TWC), §26.121(a); and Texas Pollutant Discharge Elimination System Permit Number 0002229-000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permit limit for total Selenium daily average at Outfall 001A; PENALTY: \$2,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Mehmood Lakhani dba C-Store; DOCKET NUMBER: 2002-0751-PST-E; TCEQ ID NUMBER: RN102360716; LOCATION: 110 North Story Road, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records on site at the station and available for review; 30 TAC §115.245(2), and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II vapor recovery system; 30 TAC §115.242(3)(A), (B), and (4), and THSC, §382.085(b), by failing to ensure that no gasoline leaks, as detected by sampling, sight, sound, or smell, existed anywhere in the dispensing equipment and by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to ensure that the TCEQ UST registration and self-certification form was submitted to the commission in a timely manner; 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system and by failing to ensure that all tanks were monitored for releases at a frequency of at least once every month; 30 TAC §334.10(b)(1)(B), by failing to provide petroleum storage tank delivery records upon request by the TCEQ; and 30 TAC §334.22(a), and TWC, §5.702 and §26.358(d), by failing to pay outstanding UST fees for Fiscal Years 1997 - 2004, along with associated late fees and interest; PENALTY: \$17,120; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Wayne Chadick dba A & A Longhorn Trailer Park; DOCKET NUMBER: 2005-1386-PWS-E; TCEQ ID NUMBERS: RN101203677; LOCATION: 17010 Interstate Highway 40 West, Amarillo, Potter County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.274(a), (b), and (c), by failing to provide the 2000, 2001, 2002, and 2003 Consumer Confidence Report to each bill paying customer and the commission,

and make a good faith effort to reach customers who do not receive water bills; TCEQ Administrative Agreed Order Docket Number 2001-1283-PWS-E, Ordering Provisions, Paragraph 1, by failing to pay \$1,100 of the \$1,250 administrative penalty assessed in the order; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis and by failing to post a public notification for the months of March, May, October, and December 2004, and March 2005; PENALTY: \$2,505; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: William C. Barfield; DOCKET NUMBER: 2005-0883-LII-E; TCEQ ID NUMBERS: 25520 and RN103567715; LOCATION: 145 Adobe Court, Hudson Oaks, Parker County, Texas; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §344.61(a), by failing to sign his legal name and affix the imprint of the seal over the signature on a contract executed on June 28, 2003, for the sale and installation of a landscape irrigation system on residential property; 30 TAC §344.94(b), by failing to ensure that a contract executed on June 28, 2003, for the sale and installation of a landscape irrigation system included the statement "irrigation in Texas is regulated by the Texas Natural Resource Conservation Commission," P.O. Box 13087, Austin, Texas 78711-3087; PENALTY: \$263; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200601495

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 7, 2006



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 17, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 17, 2006**. Comments may

also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: AVS Management Inc. dba Toor Shell Food Mart; DOCKET NUMBER: 2005-1191-PST-E; TCEQ ID NUMBER: RN101890978; LOCATION: 9875 North Houston Rosslyn Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$1,050; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Century Industrial Coatings Incorporated; DOCKET NUMBER: 2003-1266-MLM-E; TCEQ ID NUMBERS: RN101933976, 87233, F1590, 47583, and CJ0159M; LOCATION: United States Highway 69, 0.5 miles south of Loop 456, near Jacksonville, Cherokee County, Texas; TYPE OF FACILITY: paint manufacturing plant; RULES VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct a proper waste determination; 30 TAC §116.115(c) and §335.4, and Air Quality Permit Number 47583, Special Condition Number 9, by failing to prevent an unauthorized discharge; 30 TAC §335.69(d)(1) and (2), and §335.262(c)(2)(A) and (F), and CFR §262.34(c)(1)(ii), by failing to close label hazardous waste containers; 30 TAC §335.2(b), by failing to dispose of an industrial hazardous waste at an authorized site; and 30 TAC §116.110(a), and Texas Health and Safety Code (THSC), §382.085(b), by failing to authorize air emissions; PENALTY: \$14,400; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Charles Harrell; DOCKET NUMBER: 2005-1273-LII-E; TCEQ ID NUMBER: RN103565396; LOCATION: 4621 South Cooper, Suite 131-129, Arlington, Tarrant County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a) and (b), Texas Water Code (TWC), §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,250; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Elsa; DOCKET NUMBER: 2005-1526-PWS-E; TCEQ ID NUMBER: 1080005 and RN101219665; LOCATION: Elsa, Hidalgo County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.113(f)(4), and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) based on a running annual average for total trihalomethanes (TTHM); PENALTY: \$655; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Clara, Inc. dba Chevron Clara's Store and Bakery; DOCKET NUMBER: 2004-1603-PST-E; TCEQ ID NUMBERS:

71980 and RN101497071; LOCATION: 719 Highway 71 West, Smithville, Bastrop County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance, during a record review on April 2, 2003, for taking corrective action and for compensating third parties for bodily and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$1,600; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Donald Dragoo dba Union Hill Water Corporation; DOCKET NUMBER: 2005-0107-PWS-E; TCEQ ID NUMBER: RN102683711; LOCATION: 1004 East Dallas Street, Johnson County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.274(a) and (b), by failing to mail or deliver a consumer confidence report to each bill paying customer and to make a good faith effort to reach customers who do not receive water bills; 30 TAC §290.274(c), by failing to provide a copy of the consumer confidence report and certification of delivery of the report to the TCEQ; and 30 TAC §290.51(a)(3), and TWC, §5.702, by failing to pay all outstanding public health service fees; PENALTY: \$500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Hamshire Community Water Supply Corporation; DOCKET NUMBER: 2005-1229-PWS-E; TCEQ ID NUMBER: RN101283208; LOCATION: Hamshire, Jefferson County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.113(f)(4), and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for TTHM of 0.080 mg/L based on a running annual average during the fourth quarter of 2004; PENALTY: \$323; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Mardoche Abdelhak dba Trailer City Water Co; DOCKET NUMBER: 2004-0237-PWS-E; TCEQ ID NUMBERS: 01501131 and RN101652048; LOCATION: 4555 Plumnear Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: retail water distribution system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement for well Number 1; 30 TAC §290.46(e), by failing to have the facility under the supervision of a person holding a valid Class D or higher operator's license; and 30 TAC §290.51(b), by failing to pay public health service fees; PENALTY: \$578; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Marine Quest-Captain's Cove, L.P. dba Captain's Cove Marina; DOCKET NUMBER: 2003-0218-PST-E; TCEQ ID NUMBERS: 0041272 and RN101555084; LOCATION: 5965 Marina Drive, Garland, Dallas County, Texas; TYPE OF FACILITY: gasoline retail sales facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c), by failing to monitor the UST for releases at a frequency of at least once every month; 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, and that it is submitted to the agency in a timely manner; 30 TAC §334.10(b), by failing to have records of the line leak detector test, release detection, and gasoline deliveries available during the inspection; 30 TAC §334.48(c), by failing to conduct reconciliation of detailed inventory

control records on a monthly basis; and 30 TAC §334.22(a), and TWC, §5.702, by failing to pay UST annual and late fees; PENALTY: \$4,950; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Midway Truck Stop, Inc.; DOCKET NUMBER: 2005-0278-PST-E; TCEQ ID NUMBER: RN101261535; LOCATION: 3602 Houston Highway, Suite A, Victoria, Victoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4), and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system at least once every three years; 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to monitor the piping of the UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.50(b)(2)(A)(i)(III), and TWC, §26.3475(c)(1), by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records at least once each month; PENALTY: \$8,700; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: N. H. Kim, Inc. dba Fast Stop Mart A/K/A J. S. Kim, Inc. dba Fast Stop Mart; DOCKET NUMBER: 2004-0293-PST-E; TCEQ ID NUMBERS: 71680 and RN101488591; LOCATION: 5325 Airport Boulevard, Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor UST for releases; 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to ensure the UST registration and self-certification forms were submitted to the TCEQ in a timely manner; 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to have a valid TCEQ delivery certificate before accepting fuel delivery into the USTs; and 30 TAC §334.10(b), by failing to have records immediately available verifying the presence of ball float devices, financial assurance, a piping tightness test, inventory control for March - May of 2003, and fuel delivery receipts for the period July 1, 2002 to June 30, 2003; PENALTY: \$35,700; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(12) COMPANY: Redford Water Supply; DOCKET NUMBER: 2005-1074-PWS-E; TCEQ ID NUMBERS: 1890012 and RN101266054; LOCATION: State Highway 170, 16 miles east of Presidio, Presidio County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of February, March, and July 2003, and December 2004, and January 2005; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for failing to collect routine water samples; PENALTY: \$1,600; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Sid Richardson Energy Services, Ltd.; DOCKET NUMBER: 2003-0166-AIR-E; TCEQ ID NUMBERS: WM0011U

and RN100238633; LOCATION: 4.5 miles east of the intersection of State Highway 18 and Farm-to-Market Road 874 on FM 874, 1.5 miles north on FM 1218, east on County Road 301, Kermit, Winkler County, Texas; TYPE OF FACILITY: natural gas liquids processing plant; RULES VIOLATED: 30 TAC §101.20(1), 40 CFR Part 60.482-1, and THSC, §382.085(b), by failing to demonstrate compliance with all requirements of 40 CFR Subpart VV by failing to have records, reports, performance test results, and documentation of inspections; 30 TAC §101.20(1), 40 CFR Part 60.482-2(c)(2), and THSC, §382.085(b), by failing to attempt repairs within five days after each leak is detected for pumps in light liquid service for the reporting period October 1, 2001 - March 31, 2002; 30 TAC §101.20(1), 40 CFR Part 60.482-7(d)(2), and THSC, §382.085(b), by failing to attempt repairs within five days after each leak is detected for valves in gas/vapor service and in light liquid service for the reporting period October 1, 2001 - March 1, 2002; 30 TAC §101.20(1), 40 CFR Part 60.482-3(g)(2), and THSC, §382.085(b), by failing to attempt repairs within five days after each leak is detected for compressors for the reporting period October 1, 2001 - March 1, 2002; 30 TAC §101.20(1), 40 CFR Part 60.482-6(a)(1), and THSC, §382.085(b), by failing to equip each open ended valve or line with a cap, blind flange, plug, or a second valve; 30 TAC §101.20(1), 40 CFR Part 60.482-6(a)(1), and THSC, §382.085(b), by failing to equip each open ended valve or line with a cap, blind flange, plug, or a second valve; 30 TAC §101.20(1), 40 CFR Part 60.487(a), and THSC, §382.085(b), by failing to submit two semiannual reports for the period January 1998 to January 1999; 30 TAC §122.503(a)(1) and THSC, §382.085(b), by failing to submit an updated application for the Title V Operating Permit Number O-00769 reflecting changes for Flare EPN FL-3, 40 CFR Subpart KKK applicability; 30 TAC §101.20(1), 40 CFR Part 60.18(c)(1), and THSC, §382.085(b), by exceeding the five-minute limit for visible emissions from Flare EPN FL-3 during any two consecutive hour period; and 30 TAC §116.115(c), Air Permit Number 2724, Special Provision Number 3, and THSC, §382.085(b), by failing to meet the minimum sulfur recovery efficiency limit of 95% for the Sulfur Recovery Unit Stack for the period July 5 - 8, 2001; PENALTY: \$70,288; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(14) COMPANY: Steve Henricus Byl dba Dutch Cowboy Dairy; DOCKET NUMBER: 2002-1299-AGR-E; TCEQ ID NUMBERS: 003316-000 and RN101516359; LOCATION: 36341 Farm-to-Market Road 914, Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §§305.125(1) and (5), 321.31(a), and 321.39(f)(19)(F); TCEQ Water Quality Permit Number 003316-000, Sections V and VII; and TWC, §26.121(a), by failing to prevent the unauthorized discharge of wastewater into the waters of the state, and by failing to properly maintain equipment in compliance with the rules; and 30 TAC §321.42(a)(5) and Water Quality Permit Number 003316-000, Section VII, by failing to take samples within the first 30 minutes of the unauthorized discharge; PENALTY: \$3,640; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Tanoli Enterprises, Inc. dba Super Star II; DOCKET NUMBER: 2004-1341-PST-E; TCEQ ID NUMBERS: 6520 and RN101911352; LOCATION: 3180 Merriman Street, Port Neches, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B) and §334.48(g), by failing to maintain and make available for review all required UST records on-site during business hours; 30 TAC §115.242(3) and §115.245(1)(B), and THSC,

§382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition by failing to obtain a passing volume-to-liquid ratio test on its vapor recovery system; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least every month (not to exceed 35 days between each monitoring); and 30 TAC §115.245(2), and THSC, §382.085(b), by failing to test the Stage II vapor recovery system upon major system replacement; PENALTY: \$7,600; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Town & Country Enterprises Inc. dba Town & Country Food Mart; DOCKET NUMBER: 2005-1525-PST-E; TCEQ ID NUMBERS: 632 and RN102018603; LOCATION: 1401 North Texas Avenue, Bryan, Brazos County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: YFZ Land, LLC; DOCKET NUMBER: 2004-0800-MLM-E; TCEQ ID NUMBERS: 75151, 72321, 72047, 2070006, and RN104250626; LOCATION: on two contiguous tracts of property totaling 1,691 acres approximately four miles northeast of the intersection of United States Highway 277 and Rudd Road north of Eldorado, Schleicher County, Texas; TYPE OF FACILITY: religious retreat; RULES VIOLATED: 30 TAC §366.051(a), by failing to obtain a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system; 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain storm water authorization prior to construction activity at the site; 30 TAC §331.3(a), and TWC, §26.121(a), by failing to obtain authorization from the TCEQ prior to the construction and use of a Class V injection well; 30 TAC §116.110(a), and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization prior to constructing a concrete batch plant at the site; 30 TAC §106.512(1), and THSC, §382.085(b), by failing to obtain permit authorization or satisfy the conditions of a permit by rule prior to the use of two diesel generators at the site; 30 TAC §324.4(1) and 40 CFR §279.22(c)(1), by failing to label used oil containers; 30 TAC §290.42(b)(1), by failing to provide disinfection equipment for a public water supply system; Texas Pollutant Discharge Elimination System General Permit Number TXR151300; Part III, Section D.2, Section F.1(a - d), (f), (h - i), 2(b), 3(a), 4, 5(b - c), and 9, by failing to comply with storm water permit provisions by failure to post a site notice that is readily available to the public and not including all required information on the site notice. Additionally, the storm water pollution prevention plan was lacking in that it did not include an accurate and complete list of potential pollutants and sources, the intended schedule of construction, total and construction acreage, soil type, complete site map, name of the receiving water, copy of the construction general permit, stabilization practices, permanent pollution control measures, description of wastes stored, and pollutant sources from non-construction areas, and by failing to implement structural controls and identify non-storm water discharges; 30 TAC §330.5(a)(3), by failing to prevent a discharge of diesel fuel to the soil at the site; 30 TAC §106.142, and THSC, §382.085(b), by failing to obtain permit authorization or satisfy the conditions of a permit by rule prior to the construction of a rock crusher; 30 TAC §330.5(c), by failing to obtain authorization from the commission prior to dumping municipal solid waste at the site; 30 TAC §111.201, and THSC, §382.085(b), by conducting outdoor burning at

the site; 30 TAC §106.144(4), and THSC, §382.085(b), by failing to obtain permit authorization or satisfy the conditions of a permit by rule prior to the construction of a bulk mineral storage silo at the site; 30 TAC §210.5(a), by failing to obtain authorization prior to discharging any reclaimed wastewater; 30 TAC §290.46(r), by failing to provide at least 35 pounds per square inch throughout the distribution system of the public water supply system; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends at least 18 inches above the natural ground surface for a well that services the public water supply system; 30 TAC §290.41(c)(3)(J), by failing to provide a proper sealing block for the well; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent; 30 TAC §290.41(c)(3)(N), by failing to provide a meter to measure water flow at the well; 30 TAC §290.41(c)(3)(O) by failing to provide an intruder-resistant fence or locked well house; 30 TAC §290.46(n)(2), by failing to provide a map of the distribution system; 30 TAC §290.39(m), by failing to notify the TCEQ upon start up of a new public water system; 30 TAC §290.43(d)(7), by failing to maintain the pipes discharging from the well and associated with the pressure tank; 30 TAC §290.43(e), by failing to secure the pressure tank within a locked building or an intruder resistant fence; 30 TAC §290.45(b)(1)(A)(i), and THSC, §341.0315(c), by failing to provide the required minimum well capacity; 30 TAC §290.45(b)(1)(A)(ii), and THSC, §341.0315(c), by failing to provide the required minimum pressure tank capacity; 30 TAC §290.44(a)(1), by failing to provide piping that conforms to American National Standards Institute/National Science Foundation Standard 61; 30 TAC §116.115(c), Air Permit Number 72151, Special Conditions Number 4.D., and THSC, §382.085(b), by failing to install a cartridge filter on the bulk storage silo, in accordance with permit requirements; PENALTY: \$20,373; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200601494

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 7, 2006



Notice of Public Hearings on Proposed Revisions to Chapters 101 and 122, to the State Implementation Plan, and to the Texas State Plan for Designated Facilities and Pollutants

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed new §§101.501 - 101.504, 101.506, 101.508, 101.601, and 101.602 of 30 TAC Chapter 101, General Air Quality Rules; proposed amendments to §§122.10, 122.12, 122.120, and 122.410, and proposed new §§122.420, 122.422, 122.424, 122.426, 122.428, 122.440, 122.442, 122.444, 122.446, and 122.448 of 30 TAC Chapter 122, Federal Operating Permits Program, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102 and §60.23, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs) and state plans for designated facilities and pollutants. The Federal Clean Air Act (FCAA) provisions requiring these plans are located in FCAA, §110 and §111, respectively. Proposed new §§101.501 - 101.504, 101.506, 101.508, and 101.601 will be submitted to the EPA as a revision to the SIP. Proposed new §101.601 and §101.602 will be submitted to the EPA as part of the FCAA, §111 plan.

The commission proposes new §§101.501 - 101.504, 101.506, and 101.508 to incorporate by reference the model trading rule require-

ments of the Clean Air Interstate Rule (CAIR) and would revise the SIP required under FCAA, §110. CAIR is a federal program promulgated to reduce the interstate transport of fine particulate matter through the control of nitrogen oxides (NO_x) and SO₂ emissions. House Bill (HB) 2481, 79th Legislature, 2005, directed the commission to meet the CAIR reduction requirements by incorporating the CAIR model trading rules by reference and participating in an EPA-administered cap and trade program for annual NO_x and annual SO₂ emissions. The bill also provided specific direction for the methodology to be used in allocating the NO_x trading budget provided to Texas, identified an amount of CAIR NO_x allowances to be set aside for new sources, and specified that reductions associated with CAIR would be required only from new and existing electric generating units. The commission also proposes amendments to Chapter 122 to incorporate the permitting requirements for CAIR and the Clean Air Mercury Rule (CAMR) by reference. The CAIR and CAMR permits will establish federal enforceability of the CAIR and CAMR trading programs by listing all applicable requirements of the trading programs applicable to each CAIR and CAMR unit at the source. **(Rule Project Number 2005-046-101-EN)**

The commission proposes new §101.601 and §101.602 to incorporate by reference the model trading rule requirements of the CAMR, and would revise the FCAA, §111 state plan. CAMR is a federal program promulgated to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units nationwide. HB 2481 directed the commission to meet the CAMR reduction requirements by incorporating the CAMR model trading rules by reference and participating in an EPA-administered cap and trade program for annual mercury emissions. **(Rule Project Number 2005-047-101-EN)**

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled in Austin on April 11, 2006, at 2:00 p.m. in Building E, Room 201S at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle; in Fort Worth on April 12, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 2309 Gravel Drive; and in Houston on April 13, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Regional Office, located at 5425 Polk Street, Suite H, 3rd Floor. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during each hearing; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions after each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. **All comments should reference the rule project numbers that they pertain to. Comments must be received by 5:00 p.m., April 17, 2006.** Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adapt.html, and additional information is available on the TCEQ CAIR/CAMR Web page at <http://www.tceq.state.tx.us/implementation/air/sip/caircamr.html>. For further information, please contact Kim Herndon, Air Quality Planning Section, at (512) 239-1421.

TRD-200601384
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 3, 2006



Notice of Water Quality Applications

The following notices were issued during the period of February 21, 2006 through February 28, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ANNONA has applied for a renewal of TPDES Permit No. 14255-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 58,000 gallons per day. The facility is located approximately 1,500 feet east and 4,400 feet south of the intersection of United States Highway 82 and Farm-to-Market Road 44 in Red River County, Texas.

BAHRAM SOLHJOU has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014620001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 1,800 feet south of Isom Road, approximately 3,500 east of Hardy Tollway in Harris County, Texas.

CITY OF BLUE RIDGE has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. 10039-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 140,000 gallons per day to a daily average flow not to exceed 280,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of Farm-to-Market Road 545 and Farm-to-Market Road 1377 in Collin County, Texas.

CITY OF MULLIN has applied for a renewal of TPDES Permit No. 13758-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 3,100 feet south of the intersection of State Highway 183 and Farm-to-Market Road 573 and approximately 1,900 feet east of the Farm-to-Market Road 573 in the City of Mullin in Mills County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT No. 24 has applied for a major amendment to TPDES Permit No. 12655-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 0.3 mile west of Bammel-North Houston Road, 1.6 miles north of the intersection of State Highway 249 and Bammel-North Houston Road, and 2.9 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960 in Harris County, Texas.

CITY OF PETROLIA has applied for a major amendment to Permit No. WQ0010247001, to authorize an increase in the daily average flow from 50,000 gallons per day to 100,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via surface irrigation of 12 acres of non-public access pastureland. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow

not to exceed 75,000 gallons per day via surface irrigation of 12 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3,700 feet due east of the intersection of State Highway 148 and Farm-to-Market Road 2332 in Clay County, Texas.

PULTE HOMES OF TEXAS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014650001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1.8 miles south and 0.2 miles west of the intersection of Farm-to-Market Road 1960 and West Lake Houston Parkway in Harris County, Texas.

CITY OF QUITMAN has applied for a renewal of TPDES Permit No. 10254-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 0.3 mile west-northwest of the intersection of State Highway 37 and State Highway 154 (City of Quitman) and 700 feet north of State Highway 154 in Wood County, Texas.

CITY OF TULIA has applied for a renewal of Permit No. 10305-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day via surface irrigation of 288 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2 miles east of Interstate Highway 27 along State Highway 86 on the north side, just east of the city limits of the City of Tulia in Swisher County, Texas.

U. S. DEPARTMENT OF THE INTERIOR has applied for a renewal of TPDES Permit No. 12865-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,300 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas.

WOODMERE DEVELOPMENT CO., LTD has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014653001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 1,600 feet southeast of the intersection of Carpenters Bayou and Beaumont Highway, east of the West Canal, approximately 3,400 feet north of the north right-of-way of U. S. Highway 90, Harris County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF CROSS PLAINS to correct a typographical error regarding the Category C licensed operator. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 87,500 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 50.1 acres of non-public access agricultural land. The facility is located approximately 2,500 feet west of State Highway 279 and 4,000 feet south of State Highway 36 in Callahan County, Texas.

TRD-200601310

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2006

◆ ◆ ◆
Notice of Water Quality Applications

The following notices were issued during the period of February 28, 2006 through March 6, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BANDERA has applied for a renewal of TPDES Permit No. WQ0010121001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 277,000 gallons per day. The facility is located approximately 0.5 mile northeast of the intersection of State Highway 16 and Farm-to-Market Road 689 in the City of Bandera in Bandera County, Texas.

EQUISTAR CHEMICALS, L.P. which operates the Channelview Complex, a synthetic organic chemical manufacturing facility, has applied for a major amendment without renewal to authorize the addition of utility wastewaters which include non-contact once-through cooling water, de minimus amounts of cooling tower water, raw and well water, groundwater seepage, condensate, and analyzer instrumentation drain wastewaters via Outfalls 002, 003, 003A, 003B, 003C, 004 and 005; the addition of storm water (from secondary containment structures) via Outfalls 002 and 004; and delineate Outfalls 003A, 003B, and 003C location descriptions. The current permit authorizes the discharge of treated organic chemical manufacturing process wastewater, auto shop wastewater, laboratory wastewater, cooling tower blowdown, sanitary wastewater, loading area and process area washdown, tank farm wastewater, heat exchanger blasting slab waste, steam blowdown, demineralization regeneration blowdown, methanol neutralization sump wastewater, and process area storm water runoff at a daily average flow not to exceed 7.2 MGD via Outfall 001; potable water, firewater, hydrotest water, clarified water, steam blowdown, construction water, de minimus quantities from spill cleanups, groundwater seepage, non-process area storm water runoff, and post first flush process area storm water runoff on a continuous and flow variable basis via Outfall 002; potable water, firewater, hydrotest water, clarified water, steam blowdown, construction water, de minimus quantities from spill cleanups, post first flush process area storm water runoff, and non-process area storm water runoff on an intermittent and flow variable basis via Outfall 004. The facility is located at 8280 Sheldon Road, approximately four miles north of Interstate Highway 10 in the extraterritorial jurisdiction of the City of Houston, Harris County, Texas.

CITY OF JASPER has applied for a major amendment to TPDES Permit No. WQ0010197001 to authorize the removal of effluent limits for Copper and Mercury. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow of 3,250,000 gallons per day. The facility is located approximately 0.8 miles east of the intersection of Farm-to-Market Roads 2799 and 777, and approximately 1 mile northeast of the intersection of U. S. Highway 190 and State Highway 63 in Jasper County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 94 has applied for a new permit, proposed TPDES Permit No. WQ0014656001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,080,000 gallons per day. The facility is located approximately 8,300 feet southeast of the intersection of Springs Trails Ridge and Riley-Fuzzell Road on the north side of Spring Creek in Montgomery County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. WQ0010240001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,220,000 gallons per day. The facility is located on the north side of Western Avenue in West Orange, from Adams Bayou west to Boston Avenue (from 1,000 feet to 2,400 feet east of Western Avenue/Dayton Street) in Orange County, Texas.

SOUTHWESTERN PUBLIC SERVICES COMPANY which operates the Nichols-Harrington Station, a steam electric generating facility, has applied for a major amendment to TPDES Permit No. WQ0001990000 to authorize the removal of irrigation sections 97, 98, and 99 (totaling 348 acres of land), tailwater pond 4A, and blowdown pond 1A from service; and delete Outfalls 010 and 014 from the permit. The current permit authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 001; the discharge of storm water commingled with cooling tower blowdown, low volume wastewater, metal cleaning waste, and chemical metal cleaning waste on an intermittent and flow variable basis via Outfalls 003, 004, 005, 006, 007, 008, 009, 010, 012, 013, and 014; the discharge of coal pile runoff on an intermittent and flow variable basis via Outfall 011; and land application of cooling tower blowdown, low volume wastewater, chemical and metal cleaning wastes, boiler seal water, and storm water over 1,600 acres at a hydraulic application rate not to exceed 4.6 acre-feet per year per acre irrigated. The facility is located northwest of the intersection of Lakeside Drive and St. Francis Avenue, 1.25 miles west of State Highway 136 and six miles Northwest (via State Highway 136) of the City of Amarillo, Potter County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION which operates the Texas Department of Transportation Municipal Separate Storm Sewer System (MS4), has applied for a renewal of NPDES Permit No. TXS000502 to authorize storm water point source discharges to surface water in the state from the Texas Department of Transportation MS4. This permit will be renewed as TPDES Permit No. WQ0004644000. The MS4 is located within the corporate boundary of the City of Beaumont, in Jefferson County, Texas.

UNION GROVE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13416-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 3.5 miles northeast of the intersection of U. S. Highway 271 and U. S. Highway 80 in Upshur County, Texas.

WEST I-10 KATY HOLDINGS I, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014646001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day. The facility is located 3,300 feet east of the intersection of Interstate Highway 10 and Igloo Road along Interstate Highway 10 and 1,400 feet south of Interstate Highway 10 along the west bank of Bufalo Bayou in Waller County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 89 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize including an additional interim phase not to exceed a daily average flow of 300,000 gallons per day and adding alum to the clarifier. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 5,200 feet north of the intersection of Riley Fussell Road and Rayford Road in Montgomery County, Texas.

CITY OF NATALIA has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 190,000 gallons per day in the interim phase. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The facility is located approximately 1,200 feet southwest of the City of Natalia on the west side of 6th Street in Medina County, Texas.

TRD-200601509

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 8, 2006



Notice of Water Rights Application

Notice issued February 24, 2006:

Application No. TA-5922; Sunoco Partners Marketing & Terminals L.P. Nederland Marine Terminal, applicant; P.O. Box 758, 2300 N HWY 347; Nederland, Texas 77627, seeks a Temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality (Commission or TCEQ) Rules 30 TAC §295.1, et seq. Applicant seeks a temporary water use permit to divert and use not to exceed 128 acre-feet of water within a period of two (2) years from the Neches River, Neches River Basin, at a maximum diversion rate of 13.37 cfs (6,000 gpm) for industrial use (hydrostatic testing) in Jefferson County. The diversion point will be located at Latitude 30.01 N, Longitude 93.98 W, in the vicinity south of Highway 347, approximately 5 miles southeast of the City of Beaumont, Texas and 2 miles northeast of the Town of Nederland, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on October 26, 2005. Additional information and fees were received on December 28, 2005. The application was declared administratively complete and accepted for filing on February 3, 2006. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by March 16, 2006.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested applica-

tion which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea informacion en Espanol, puede llamar al 1-800-687-4040.

TRD-200601309

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 2, 2006



Notice of Water Rights Application

Notices issued March 3, 2006 through March 6, 2006:

APPLICATION NO. 12-2281C; Ray J. Miller, applicant, P.O. Box 309, Meridian, TX 76665, seeks an amendment to Certificate of Adjudication No. 12-2281 pursuant to Texas Water Code 11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 12-2281 authorizes the owner to divert and use 107 acre-feet of water per year from the North Bosque River, tributary of the Bosque River, Brazos River Basin at a maximum diversion rate of 2.67 cfs (1,200 gpm) for agricultural purposes to irrigate 87.5 acres in Bosque County. Special Condition 4C states the authorization to divert and use 100 acre-feet of water at a maximum diversion rate of 2.67 cfs (1,200 gpm) shall expire and become null and void without further Commission action after December 31, 2005. Special Condition 4D states at the end of the term limitation, owner shall be authorized to divert the 7 acre-feet of water per year. Several other special conditions apply. The applicant seeks an amendment to Certificate of Adjudication No. 12-2281 to renew or extend the term to divert and use an additional 9.57 acre-feet of water per year, for a total of 16.57 acre-feet per year from the North Bosque River, Brazos River Basin, at a maximum diversion rate of 1.11 cfs (500 gpm), for agricultural purposes in Bosque County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on September 30, 2005. Additional information was received on December 14, 2005; January 20, 2006; and January 25, 2006. The application was declared administratively complete and accepted for filing on February 7, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5918; Larry Slone dba Slone Ranch, applicant, 12050 US Hwy 59 South, Marshall, TX 75672, seeks a Water Use Permit pursuant to Texas Water Code 11.121, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Larry Slone dba Slone Ranch seeks a water use permit to maintain an existing dam and reservoir on an unnamed tributary of Colliers Creek, tributary of Eight Mile Creek, tributary of the Sabine River, Sabine River Basin. Appli-

cant also seeks to divert and use not to exceed 66 acre-feet of water per year from the reservoir at a maximum diversion rate of 1.114 cfs (500 gpm) for agricultural purposes to irrigate 66 acres out of 133 acres in the Martha Duncan Survey, Abstract No. 197; and the Elizabeth Carroll Survey, Abstract No. 135, in Harrison County. The reservoir is located 10 miles south from the City of Marshall and 15 miles north from Carthage, a nearby town, with station 1 on the centerline of the dam bearing 89 NE, 3800 feet from the southwest corner of the Carroll Survey, also being at Latitude 32.402 N, Longitude 94.356 W. The applicant indicates the reservoir has a normal maximum operating capacity of 330 acre-feet and surface area of 52.2 acres. The diversion point is located on the reservoir bearing N60.250 E, 3100 feet from the southwest corner of the Carroll Survey, Harrison County, also being at Latitude 32.403 N, Longitude 94.360 W. Water which is diverted but not consumed as a result of the above stated use will be returned to the unnamed tributary of Colliers Creek at the dam. Ownership of the land to be irrigated and inundated by the reservoir is evidenced by deeds recorded in Volume 1305, Page 625; Volume 2808, Page 171; Volume 2808, Page 178; Volume 2817, Page 32; and Volume 773, Page 212-213 in the Official County Clerk Records of Harrison County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on September 12, 2005. Additional information and fees were received on November 28, 2005 and January 18, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 1, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea informacion en Espanol, puede llamar al 1-800-687-4040.

TRD-200601506

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2006

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 28, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. JNS & Samir Corporation; SOAH Docket No. 582-05-1529; TCEQ Docket No. 2004-0241-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against JNS & Samir Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200601510
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 8, 2006

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 17, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 17, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Air System Components L.P.; DOCKET NUMBER: 2006-0008-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102316981; LOCATION: Horizon City, El Paso County, Texas; TYPE OF FACILITY: metal extrusions; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit a permit compliance certification; PENALTY: \$1,540; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: Avis Rent A Car System, Inc.; DOCKET NUMBER: 2005-2065-AIR-E; IDENTIFIER: RN100814912; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distribution station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the oxygenated fuel requirement; PENALTY: \$960; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: City of Beaumont; DOCKET NUMBER: 2005-1901-MWD-E; IDENTIFIER: RN101612224; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10501020, and the Code, §26.121(a), by failing to comply with permitted effluent limits for five-day carbonaceous biochemical oxygen demand (CBOD5); PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2005-1839-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §111.111(a)(1)(A), §116.115(c), Air Permit Numbers 8810 and PSD-TX-402M2, C-18706, 18707, 19599, and PSD-TX-023, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere and failing to maintain opacity at 30% averaged over a six-minute period; 30 TAC §101.20(2), §115.352(4), 40 Code of Federal Regulations §63.167(a)(1), and THSC, §382.085(b), by failing to equip an open-ended line with a cap, blind flange, or second valve; and 30 TAC §116.116(a) and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: \$130,625; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Edinburg; DOCKET NUMBER: 2005-0531-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 62575, RN102064102; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: retail sales of aviation fuel; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(iii)(II) and (9)(A)(iv), and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases, by failing to use equipment capable of measuring the level of stored substances over the full range of the tank's height, and by failing to report to the agency any underground storage tank (UST) system analysis report result; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems; PENALTY: \$6,400; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2005-1792-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Flexible

Permit Number 18287, and THSC, §382.085(b), by failing to prevent the unauthorized emissions of 15,265 pounds of carbon monoxide, 37 pounds of ammonia, and six pounds of hydrogen cyanide; PENALTY: \$5,340; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Gulf West Landfill TX, L.P.; DOCKET NUMBER: 2005-1829-IHW-E; IDENTIFIER: RN102151099; LOCATION: Anahuac, Chambers County, Texas; TYPE OF FACILITY: industrial solid waste management; RULE VIOLATED: 30 TAC §335.2(b), §335.582(2), and Permit Number SW-39039-001, by failing to prevent the disposal of unauthorized solid waste; PENALTY: \$2,928; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2005-1254-IWD-E; IDENTIFIER: RN100219740; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 00584, and the Code, §26.121(a), by failing to comply with the permit limitations for CBOD5, sulfate, and flow; PENALTY: \$11,280; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: International A.L.E.R.T. Academy; DOCKET NUMBER: 2005-2034-PWS-E; IDENTIFIER: RN101193167; LOCATION: Big Sandy, Upshur County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0135(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$328; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Lyondell-Citgo Refining L.P.; DOCKET NUMBER: 2005-2073-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.20(3), §116.715(a), Flexible Air Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Rodney Warren McNeal dba McNeal Dairy; DOCKET NUMBER: 2005-1834-AGR-E; IDENTIFIER: RN102900875; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: agriculture and dairy cattle farm; RULE VIOLATED: 30 TAC §321.31(a), General Permit Number TXG920269, and the Code, §26.121(a), by failing to prevent a discharge of agricultural wastewater; PENALTY: \$4,160; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Oiltanking Beaumont Partners, L.P.; DOCKET NUMBER: 2005-1865-AIR-E; IDENTIFIER: RN101042885; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum storage terminal; RULE VIOLATED: 30 TAC §116.715(a), §122.143(4), Flexible Air Permit (FOP) Number 21356, Federal Operating Permit Number 1804, and THSC, §382.085(b), by failing to seal two open-ended lines with a cap, blind flange, plug, or a second valve, by failing to implement the 28-day maintenance intensive directive fugitive monitoring program required by the flexible permit, and by failing to maintain leak detection and repair records; 30

TAC §116.715(a), §122.143(4), Flexible Air Permit Number 21356, FOP Number 1804, and THSC, §382.085(b), by failing to repair 13 leaking valves and eight flanges; 30 TAC §101.10(b)(2)(A) and THSC, §382.085(b), by failing to report accurate emissions data for fugitive monitoring; 30 TAC §122.143(4), §122.145(2)(A) and (C), FOP Number 1804, and THSC, §382.085(b), by failing to include in the semiannual deviation report five violations identified to Oiltanking by the commission; and 30 TAC §122.143(4), §122.146(5)(C)(i), FOP Number 1804, and THSC, §382.085(b), by failing to reference in the 2004 annual compliance certification five violations identified to Oiltanking by the commission; PENALTY: \$29,412; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Owens Corning; DOCKET NUMBER: 2005-2056-AIR-E; IDENTIFIER: RN100223585; LOCATION: Waxahachie, Ellis County, Texas; TYPE OF FACILITY: fiberglass manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification of a reportable emissions event; and 30 TAC §116.115(c), Permit Number 6093, and THSC, §382.085(b), by failing to maintain the dry electrostatic precipitator which resulted in particulate matter emissions that exceeded permitted emission limits; PENALTY: \$2,434; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: City of Reno; DOCKET NUMBER: 2006-0054-PWS-E; IDENTIFIER: RN102686581; LOCATION: Azle, Parker County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: \$323; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Shawn & Sameer, Inc. dba Breckenridge Minit Mart; DOCKET NUMBER: 2005-1848-PST-E; IDENTIFIER: RN101443166; LOCATION: Breckenridge, Stephens County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases and by failing to reconcile inventory control records; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; 30 TAC §334.10(b), by failing to maintain UST records at the facility and make them immediately available for inspection upon request; 30 TAC §334.49(c)(2) and (4) and the Code, §26.3475(d), by failing to regularly inspect the cathodic protection system and by failing to inspect and test the cathodic protection system for operability and adequacy of protection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; PENALTY: \$7,052; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: Stonewater Pipeline Company, L.P.; DOCKET NUMBER: 2005-1972-AIR-E; IDENTIFIER: RN100215607; LOCATION: Sonora, Sutton County, Texas; TYPE OF FACILITY: plant that compresses and transmits natural gas; RULE VIOLATED: 30 TAC §122.145(2)(A) and §122.146(1) and THSC, §382.085(b), by failing to timely submit the annual permit compliance certification and associated deviation report; PENALTY: \$3,800; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013.

(17) COMPANY: Sunset Logistics, Inc.; DOCKET NUMBER: 2006-0036-AIR-E; IDENTIFIER: RN102863529; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: transportation company; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by allegedly having emitted into the atmosphere air contaminants in concentration and duration as to create a dust nuisance; PENALTY: \$640; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Texas Municipal Power Agency; DOCKET NUMBER: 2006-0064-PWS-E; IDENTIFIER: RN100214550; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: steam electric station with public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: \$345; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2005-2074-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification of a reportable emissions event; 30 TAC §116.115(b)(2)(F) and (c), Permit Number 22110, and THSC, §382.085(b), by failing to maintain a solenoid on the water valve; and 30 TAC §111.111(a)(8) and THSC, §382.085(b), by failing to maintain visible emissions below the 30% opacity limit; PENALTY: \$11,491; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: WTG Fuels, Inc. dba Plaza Self Serve 150322; DOCKET NUMBER: 2005-1547-PST-E; IDENTIFIER: RN102043718; LOCATION: Littlefield, Lamb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(A) and the Code, §26.3475(c)(2), by failing to equip the fill pipe with a tight-fill fitting, adapter, or similar device which provides a liquid-tight seal; 30 TAC §334.49(a) and (c)(2)(C) and the Code, §26.3475(d), by failing to provide corrosion protection for the UST system and by failing to inspect the cathodic protection system at least once every 60 days; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200601428

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 7, 2006

Department of Family and Protective Services

Notice of Public Hearing - Minimum Standards for Residential Child-Care Operations and Child-Placing Agencies

The Texas Department of Family and Protective Services (DFPS) will conduct a public hearing on Thursday, March 23, 2006, from 2:00 p.m. until 6:00 p.m., at the John H. Winters Building, Public Hearing Room 125 E, 701 West 51st Street, Austin, Texas, on proposed changes to minimum standards for residential child-care operations and child-placing agencies. DFPS is proposing to repeal Chapter

720, 24-Hour Care Licensing, and replace it with three new chapters - Chapter 748, General Residential Operations and Residential Treatment Centers; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes. The proposed rules appear in this issue of the *Texas Register*.

In lieu of or in addition to oral comments, members of the public may comment in writing via e-mail at RCCLStandards@dfps.state.tx.us or mail to Child Care Licensing, DFPS, Attn: E-550 Proposed RCCL Standards, P.O. Box 149030; Austin, TX 78714-9030.

Meeting contact person: Amy Chandler, MC E-550, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3134.

Persons with disabilities planning to attend this meeting who may need auxiliary aids or services are asked to contact Amy Chandler, (512) 438-3134, by March 20, 2006, so that appropriate arrangements can be made.

TRD-200601487

Gerry Williams

General Counsel

Department of Family and Protective Services

Filed: March 7, 2006



General Land Office

Notice of Award for Consulting Services - Border Energy Forum

In Accordance with Chapter 2254 of the TEXAS GOVERNMENT CODE, the TEXAS GENERAL LAND OFFICE (GLO) files this notice of a consultant contract award. The Invitation for Consultant Services was published in the January 27, 2006 issue of the *Texas Register* (31 TexReg 585).

In its invitation for Consultant Services, the GLO was seeking consulting services to assist the GLO in identifying financial partners as part of the GLO's Border Energy Forum grant awarded by the U. S. Environmental Protection Agency (EPA). Prospective consultants were

expected to identify and attract new sources of international financing for the Texas border region. This financing is necessary to help spur development of sustainable energy projects with the Mexican states along the Texas Border.

The requested consultant services required an understanding of international financing, including, but not limited to, emerging European and Canadian markets. The selected consultant will be responsible for:

- (i) analyzing the region's ability to attract these sources;
- (ii) developing a strategic plan to be presented at the Border Energy Forum;
- (iii) helping facilitate the aforementioned workshop; and
- (iv) assisting with the preparation of a final report.

The GLO has selected David Noble, 200 Woolwich St., Unit 202 Guelph, Ontario Canada N2H3V7, to assist with the aforementioned consulting services during the period beginning February 28, 2006 through August 31, 2006. The payment for these services is \$17,650 for FY 2006.

Further information about the project may be obtained from Soll Sussman, General Land Office, 1700 N. Congress Avenue, Austin, TX. 78701-1495, phone (512) 463-5039.

TRD-200601502

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: March 8, 2006



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Bay City	Bay City Cardiology Clinic	L05975	Bay City	00	02/22/06
Houston	J F Southwest Heart Clinic	L05963	Houston	00	02/22/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medial Center	L02433	Abilene	90	02/24/06
Arlington	Physician Reliance Network Inc DBA Texas Cancer Center Arlington	L05116	Arlington	10	02/23/06
Austin	ARA Imaging	L05862	Austin	07	02/27/06
Austin	Heart of Texas Cardiology PA	L05622	Austin	03	02/14/06
Austin	Heart of Texas Cardiology PA	L05622	Austin	04	02/16/06
Austin	Hospira Inc	L03340	Austin	15	02/21/06
Brownsville	Columbia Valley Regional Medical Center	L02274	Brownsville	36	02/22/06
Brownsville	Columbia Valley Regional Medical Center	L02274	Brownsville	37	02/24/06
Brownsville	JRG Equipment DBA Springman Medical Plaza	L05831	Brownsville	04	02/22/06
Brownsville	Physician Reliance Network Inc DBA South Tx Cancer Center-Brownsville	L04985	Brownsville	08	02/16/05
Burnet	Daughters of Charity Health Services of Austin DBA Seton Highland Lakes	L03515	Burnet	29	02/24/06
Channelview	Equistar Chemicals LP	L00064	Channelview	41	02/16/06
Childress	Childress Regional Medical Center	L02784	Childress	26	02/17/06
Childress	Childress Regional Medical Center	L02784	Childress	27	02/24/06
College Station	O I Analytical	L04238	College Station	13	02/14/06
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	65	02/24/06
Corinth	Network Cancer Care of Denton DBA Cancer Care Resource	L05348	Corinth	17	02/27/06
Corpus Christi	Equastar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	16	02/23/06
Corpus Christi	Jordan Laboratories Inc	L02455	Corpus Christi	17	02/22/06
Cuero	Cuero Community Hospital	L02448	Cuero	22	02/24/06
Dallas	Cardiology Consultants of Texas	L04997	Dallas	34	02/17/06
Dallas	Doctors Hospital	L01366	Dallas	46	02/28/06
Dallas	Kindred Hospitals Limited Partnership DBA Kindred Hospital Dallas	L03503	Dallas	17	02/16/06
Dallas	Mallinckrodt Inc	L03580	Dallas	51	02/23/06
Dallas	Medical Service/Dallas Nephrology Assoc. DBA Dallas Nephrology Associates	L02604	Dallas	24	02/23/06
Dallas	Texas Hematology/Oncology Center PA DBA Patients Comprehensive Cancer Center	L05397	Dallas	13	02/21/06
Deer Park	Shell Chemical LP	L04933	Deer Park	16	02/22/06
Denison	Texoma Heart Group	L05208	Denison	08	02/17/06
Denton	Denton Surgicare Partners LTD DBA Denton Surgicare	L05819	Denton	01	02/24/06
Denton	Paramount Cardiovascular Associates PA	L05596	Denton	03	02/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	05	02/16/05
El Paso	EP Premier Medical Group PA DBA Premier Diagnostic Center	L05198	El Paso	07	02/17/06
El Paso	Providence Memorial Hospital	L02353	El Paso	88	02/15/06
El Paso	R E Thomason General Hospital	L00502	El Paso	58	02/22/06
El Paso	Southwest Endocrine Consultants	L05617	El Paso	03	02/21/06
El Paso	Texas Imaging Services of El Paso DBA Open MRI of El Paso	L05207	El Paso	04	02/17/06
Fort Worth	Baylor Medical Center Cityview DBA Baylor All Saints Cityview Hospital	L04105	Fort Worth	23	02/15/06
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	13	02/24/06
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	18	02/23/06
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	58	02/07/06
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	59	02/24/06
Fort Worth	Osteopathic Surgery Center of Fort Worth DBA Physicians Surgical Center of Ft. Wth.	L05863	Fort Worth	02	02/24/06
Fredericksburg	Fredericksburg Imaging Center DBA Hill Country Memorial Hospital	L03516	Fredericksburg	29	02/24/06
Gainesville	Khawaja N Anwar MD PA	L05607	Gainesville	01	022/22/0 6
Galveston	The University of Texas Medical Branch Office of Environmental Health & Safety	L01299	Galveston	70	02/24/06
Grapevine	Cor Specialty Associates of North Texas PA	L05576	Grapevine	03	05/15/06
Hereford	Hereford Regional Medical Center	L03111	Hereford	13	02/24/06
Houston	American Diagnostic Tech LLC	L05514	Houston	22	02/23/06
Houston	Cardiology Associates of Houston PA	L05608	Houston	02	02/22/06
Houston	CHCA East Houston LP DBA East Houston Medical Center	L03306	Houston	24	02/15/06
Houston	CHCA Woman's Hospital LP DBA The Women's Hospital of Texas	L04834	Houston	12	02/14/06
Houston	CHOPRA Imaging Center Inc DBA Advanced Diagnostics	L05566	Houston	03	02/24/06
Houston	Complete Cardiac Care	L05218	Houston	06	02/21/06
Houston	E+PET Imaging II LP DBA PET Imaging of Houston	L05620	Houston	02	02/22/06
Houston	Gulf Coast Cancer Center	L05185	Houston	09	02/17/06
Houston	Hillcroft Medical Clinic Association	L05618	Houston	02	02/21/06
Houston	Hillcroft Medical Clinic Association	L05618	Houston	03	02/22/06
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	31	01/21/06
Houston	James A Smelley PHD	L01413	Houston	11	02/22/06
Houston	Kota J Reddy MD PA	L05568	Houston	02	02/28/06
Houston	Memorial Cardiology Associates PA	L05349	Houston	04	02/22/06
Houston	Memorial Cardiology Associates PA	L05349	Houston	05	02/27/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	109	02/15/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	110	02/24/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	88	02/27/06
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	20	02/27/06
Houston	Rice University Department of Biomedical Engineering MS	L00631	Houston	25	02/22/06
Houston	Sayed Feghali Cardiology Association	L05403	Houston	02	02/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	South Texas Nuclear Pharmacy	L05304	Houston	05	02/22/06
Houston	Southwest Cardiovascular Consultants PA	L05396	Houston	05	02/21/06
Houston	Texas Nuclear Imaging Inc DBA Excel Diagnostics Imaging Clinic Medical Center	L05009	Houston	28	02/23/06
Houston	Welbor Technology Inc	L05925	Houston	01	02/28/06
Humble	Cardiovascular Association PLLC	L05421	Humble	07	02/23/06
Humble	E John R Samuel MD PA	L05232	Humble	01	02/24/06
Humble	Mohan Jacob MD PA	L04442	Humble	08	02/27/06
Huntsville	Sam Houston State University	L00873	Huntsville	18	02/22/06
Jasper	NuMed Imaging Centers Inc	L05202	Jasper	06	02/15/06
Kilgore	Wooley Fishing Tool Inc	L02915	Kilgore	06	02/21/06
Kingwood	Lieber-Moore Cardiology Associates DBA Texas Cardiology Associates	L04622	Kingwood	09	02/17/06
La Grange	Austin Heart La Grange	L05516	La Grange	12	02/16/06
La Porte	Acuren Inspection Inc	L01774	La Porte	221	02/22/06
La Porte	Invista Sarl	L05719	La Porte	03	02/15/06
Laredo	Cancer Physicians Associated PA	L05790	Laredo	04	02/21/06
Laredo	Metabolic Imaging of Laredo LLP	L05890	Laredo	02	02/24/06
Live Oak	El Dorado Chemical Co. Inc	L04366	Live Oak	07	02/27/06
Longview	Diagnostic Imaging LTD	L05621	Longview	04	02/22/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	37	02/24/06
Lufkin	Piney Woods Healthcare System DBA Woodland Heights Medical Center	L01842	Lufkin	51	02/17/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	73	02/22/06
McKinney	Complete Heart Care PA	L05935	McKinney	02	02/21/06
Midland	Capitan Corporation	L05824	Midland	03	02/27/06
Midland	Texas Oncology PA DBA Allison Cancer Center	L05614	Midland	04	02/21/06
Midlothian	Holcim (Texas) LP	L05888	Midlothian	02	02/21/06
Midlothian	TXI Operations LP	L01421	Midlothian	40	02/16/06
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	11	02/23/06
North Richland Hills	Columbia North Hills Hospital Sub. LP DBA North Hills Hospital	L02271	North Richland Hills	50	02/23/06
North Richland Hills	Dallas Cardiology Associates DBA Heartplace North Richland Hills	L05548	North Richland Hills	09	02/24/06
Odessa	Cardinal Surveys Company	L00065	Odessa	73	02/27/06
Orange	RTPS Acquisition Company LLC DBA Southeast Texas Cardiology Associates	L05204	Orange	10	02/15/06
Orange	Solvay Solexis Inc	L03968	Orange	15	02/16/06
Orange	Solvay Solexis Inc	L03968	Orange	16	02/16/06
Pampa	Titan Specialties LTD	L04920	Pampa	08	02/21/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	31	02/28/06
Pasadena	CHCA Bayshore LP DBA Bayshore Medical Center	L00153	Pasadena	78	02/24/06
Plainview	Methodist Hospital Plainview	L02493	Plainview	25	02/14/06
Plano	Physician Reliance Network Inc Texas Oncology Plano West Cancer Center	L05896	Plano	02	02/24/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	36	02/24/06
Plano	Women's Diagnostic of Texas	L05601	Plano	05	02/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	13	02/21/06
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	61	02/28/06
Richardson	Richardson Cardiology Associates	L05667	Richardson	04	02/16/06
Richardson	The University of Texas at Dallas Department of Biology	L02114	Richardson	53	02/23/06
San Antonio	Bionumerik Pharmaceuticals Inc	L05226	San Antonio	08	02/21/06
San Antonio	Cancer Therapy and Research Center Center Research Foundation DBA Institute for Drug Development	L03350	San Antonio	37	02/28/06
San Antonio	Cardiology of San Antonio PA	L05408	San Antonio	01	02/24/06
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	14	02/27/06
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	83	02/22/06
San Antonio	Radiology Associates of San Antonio PA	L04927	San Antonio	25	02/27/06
San Antonio	Saint Mary's University	L00421	San Antonio	21	02/22/06
San Antonio	Southwest General Hospital LLP DBA Southwest General Hospital	L02689	San Antonio	31	02/22/06
San Antonio	Trinity University Department of Biology	L01668	San Antonio	40	02/24/06
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	51	02/17/06
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	52	02/22/06
San Marcos	Central Texas Center for Cancer Care	L05189	San Marcos	01	02/23/06
Sherman	Texas Oncology PA DBA North Texas PET Imaging	L05502	Sherman	09	02/22/06
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	13	02/27/06
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	52	02/16/06
Stephenville	Harris Methodist Erath County	L03097	Stephenville	27	02/23/06
Sugarland	Alpha Process Sales Inc	L03305	Sugarland	12	02/27/06
Sugarland	Sugarland Heart Center Inc	L05921	Sugarland	01	02/17/06
Sugarland	Texas Oncology PA DBA Texas Oncology Cancer Center Sugarland	L05816	Sugarland	04	02/23/06
Texas City	Marathon Ashland Petroleum LLC	L04431	Texas City	22	02/16/06
Texas City	Sterling Chemical Inc	L03952	Texas City	18	02/27/06
The Woodlands	Pharmafrontiers Corp	L05592	The Woodlands	06	02/22/06
Trinity	East Texas Medical Center Trinity	L05392	Trinity	06	02/21/06
Tyler	East Texas Medical Center	L00977	Tyler	130	02/15/06
Tyler	East Texas Medical Center Healthcare Associates DBA First Physicians	L05702	Tyler	09	02/24/06
Uvalde	Uvalde County Hospital Authority DBA Uvalde Memorial Hospital	L03327	Uvalde	15	02/27/06
Waco	Baylor University	L01136	Waco	24	02/23/06
Webster	Bharat Patel MD PA DBA Bay Area Heart Center	L05444	Webster	03	02/23/06
Weslaco	Knapp Medical Center	L03290	Weslaco	36	02/21/06
Wichita Falls	Saint-Gobain Vetrotex America Inc	L02269	Wichita Falls	33	02/21/06
Winnsboro	Presbyterian Hospital of Winnsboro	L03336	Winnsboro	19	02/23/06
Throughout Tx	City of Amarillo Department of Engineering	L03220	Amarillo	18	02/16/06
Throughout Tx	Cardinal Health	L02117	Austin	79	02/23/06
Throughout Tx	Kleinfelder	L01351	Austin	51	02/22/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	G & T Paving Company	L04874	Brownsville	03	02/15/06
Throughout Tx	C D S Enterprises Inc	L05356	College Station	02	02/24/06
Throughout Tx	Valero Refining - Texas LP	L03360	Corpus Christi	23	02/23/06
Throughout Tx	Momentum Design and Construction Inc DBA Soils Mechanics	L05212	El Paso	03	02/24/06
Throughout Tx	Speesoil Inc	L05619	El Paso	01	02/21/06
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	61	02/23/06
Throughout Tx	Texas Oncology PA	L05606	Fort Worth	08	02/23/06
Throughout Tx	The Dow Chemical Company Texas Operations	L00451	Freeport	81	02/23/06
Throughout Tx	Alliance Laboratories Inc	L05586	Houston	02	02/15/06
Throughout Tx	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Center	L04452	Houston	42	02/21/06
Throughout Tx	Irisndt Inc	L04769	Houston	24	02/28/06
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	56	02/21/06
Throughout Tx	Professional Service Industries Inc	L00203	Houston	117	02/22/06
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	126	02/27/06
Throughout Tx	Tracerco/Synetix Services	L03096	Houston	59	02/17/06
Throughout Tx	E I Du Pont De Nemours & Company	L01753	Ingleside	37	02/23/06
Throughout Tx	Entact Services LLC	L05627	Irving	02	02/23/06
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	220	02/16/06
Throughout Tx	Balar Associates Inc	L05822	Marshall	01	02/22/06
Throughout Tx	Deep Well Tubular Service Inc	L04462	Midland	06	02/21/06
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	18	02/16/06
Throughout Tx	Big State X-Ray	L02693	Odessa	48	02/21/06
Throughout Tx	Black Warrior Wireline Corp	L04473	Odessa	21	02/24/06
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	11	02/16/06
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	62	02/28/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	87	02/27/06
Throughout Tx	GCT Inspection Inc	L02378	South Houston	91	02/28/06
Throughout Tx	Thermo Measuretech	L03524	Sugarland	72	02/24/06
Throughout Tx	International Industrial Fab Inc	L04935	Texas City	19	02/15/06
Throughout Tx	BJ Services Company USA	L02684	Tomball	51	02/21/06
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	25	02/24/06
Throughout Tx	Gray Wireline Service Inc	L03541	Weatherford	16	02/14/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	41	02/22/06
Houston	Erik A Orzeck MD	L01599	Houston	14	02/16/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200601501
Cathy Campbell
General Counsel
Department of State Health Services
Filed: March 8, 2006

◆ ◆ ◆
Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of GBS ADMINISTRATORS, INC., a foreign third party administrator. The home office is OLYMPIA, WASHINGTON.

Application to change the name of THE FLEX COMPANY OF AMERICA, INC. to PROCESSWORKS, INC., a foreign third party administrator. The home office is BROOKFIELD, WISCONSIN.

Application to change the name of SCRIP SOLUTIONS, LLC to BIO-SCRIP PBM SERVICES, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200601512
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 8, 2006

◆ ◆ ◆
Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation will hold a public hearing on Thursday, March 30, 2006, at 9:30 a.m. in the Tippy Foster Room of the Division of Workers' Compensation's central office located at 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609 (near the intersection of Highway 71 and Riverside Drive).

The Division of Workers' Compensation will hear testimony on new, amended, and repealed rules (28 TAC §126.14, concerning Treating Doctor to Define Compensable Injury; 28 TAC §§126.5 - 126.7, 28 TAC §130.2 and §130.6, 28 TAC §126.14, 28 TAC §130.5 and 130.110 (repeals), concerning Designated Doctor/Required Medical Examination; 28 TAC §§180.21, 180.22, and 180.28, concerning Peer Review; and 28 TAC §133.500 and §133.501, concerning Electronic Medical Billing). These proposed rules were published in the *Texas Register* on February 3, 2006 (31 TexReg 664), and may be viewed on the Texas Department of Insurance, Division of Workers' Compensation's website at <http://www.tdi.state.tx.us>. Although the comment period for these rules closed on March 6, 2006, additional comments will be accepted at the hearing.

The Texas Department of Insurance, Division of Workers' Compensation offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Idalia Cantu at (512) 804-4403 a minimum of two days prior to the hearing date.

For further information regarding this notice, you may contact Brian White, Assistant General Counsel at (512) 804-4296.

TRD-200601513
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 8, 2006

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 650 "Casino Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 650 is "CASINO CASH". The play style for Game 1 is "key number match". The play style for Game 2 is "yours beats theirs". The play style for Game 3 is "key symbol match with prize legend". The play style for Game 4 is "yours beats theirs".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 650 shall be \$7.00 per ticket.

1.2 Definitions in Instant Game No. 650.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, 7 SYMBOL, GRAPES SYMBOL, BELL SYMBOL, STAR SYMBOL, CHERRY SYMBOL, MELON SYMBOL, HORSESHOE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$7.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$7,500, and \$75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 650 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
7 SYMBOL	SEVN
GRAPES SYMBOL	GRPS
BELL SYMBOL	BELL
STAR SYMBOL	STAR
CHERRY SYMBOL	CHRY
MELON SYMBOL	MELN
HORSESHOE SYMBOL	SHOE
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$7.00	SEVEN\$
\$10.00	TEN\$

\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$7,500	75 HUND
\$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 650 - 1.2E

CODE	PRIZE
SVN	\$7.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$7.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$7,500, or \$75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (650), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 650-0000001-001.

L. Pack - A pack of "CASINO CASH" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001

and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASINO CASH" Instant Game No. 650 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASINO CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 47 (forty-seven) Play Symbols. GAME 1: If a player matches YOUR NUMBER play symbol to any of the four WHEEL NUMBERS play symbols, the player wins prize shown for that number. GAME 2: If a player's total of YOUR CARDS play symbols is greater than the total of the DEALER'S CARDS play symbols in the same hand, the player wins prize shown for that hand. A=11; K, Q, J=10. GAME 3: If a player reveals 3 matching symbols in the same PULL, the player wins prize shown in the legend. GAME 4: If any of a player's YOUR CARDS play symbols beats the DEALER'S CARD, the player wins prize shown. Aces are high. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 47 (forty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut and have exactly 47 (forty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 47 (forty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 47 (forty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. GAME 1 No duplicate non-winning prize symbols.
- C. GAME 1 No duplicate non-winning Wheel Numbers play symbols.
- D. GAME 1 Non-winning prize symbols will never be the same as the winning prize symbol(s).
- E. GAME 1 No prize amount in a non-winning spot will correspond with the Wheel Number play symbol (i.e. 5 and \$5).
- F. GAME 2 No duplicate non-winning hands in the same order.
- G. GAME 2 No duplicate non-winning prize symbols.
- H. GAME 2 No ties between total of Your Cards and Dealer's Cards within a hand.
- I. GAME 2 No hand will contain two aces.
- J. GAME 3 No duplicate non-winning pulls in the same order.
- K. GAME 3 No horizontally adjacent non-winning pulls will contain 3 like symbols.
- L. GAME 3 No four or more like non-winning play symbols across all 4 pulls.
- M. GAME 4 No duplicate non-winning play symbols.
- N. GAME 4 No ties between Your Card and the Dealer's Card.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO CASH" Instant Game prize of \$7.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO CASH" Instant Game prize of \$1,000, \$7,500, or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS.

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASINO CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASINO

CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CASINO CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 650. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 650 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	1,075,200	4.69
\$10	336,000	15.00
\$15	134,400	37.50
\$20	84,000	60.00
\$50	67,200	75.00
\$100	29,190	172.66
\$500	2,310	2,181.82
\$1,000	546	9,230.77
\$7,500	40	126,000.00
\$75,000	15	336,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.92. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 650 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 650, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601427

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 7, 2006



Instant Game Number 673 "Joker's Wild"

1.0 Name and Style of Game.

A. The name of Instant Game No. 673 is "JOKER'S WILD". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 673 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 673.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, JOKER'S HAT SYMBOL, \$1.00, \$2.00, \$4.00, \$10.00, \$20.00, \$50.00, \$100, \$300, and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 673 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
JOKER'S HAT SYMBOL	JKR
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$300	THR HUND
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 673 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the

Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$300.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (673), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 673-0000001-001.

L. Pack - A pack of "JOKER'S WILD" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JOKER'S WILD" Instant Game No. 673 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JOKER'S WILD" Instant Game is determined once the latex on the ticket is scratched off to expose 17 (seventeen) Play Symbols. If a player matches three of a kind play symbols in the same HAND, or matches two play symbols to make a pair and reveals a Joker's Hat play symbol in the same HAND the player wins PRIZE for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 17 (seventeen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 17 (seventeen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 17 (seventeen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 17 (seventeen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. There will never be 3 like cards or 2 like cards and a joker symbol appearing in the same vertical column.

D. A non-winning prize symbol will never be the same as a winning prize symbol.

E. There will never be more than one joker symbol in a hand.

F. Winning and non-winning hands will be different from each other.

G. No four or more like symbols in a hand.

No 3 or more like symbols in a hand containing a joker symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "JOKER'S WILD" Instant Game prize of \$1.00, \$2.00, \$4.00, \$10.00, \$20.00, \$50.00, \$100, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JOKER'S WILD" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JOKER'S WILD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "JOKER'S WILD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "JOKER'S WILD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 13,200,000 tickets in the Instant Game No. 673. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 673 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,504,800	8.77
\$2	739,200	17.86
\$4	290,400	45.45
\$10	118,800	111.11
\$20	52,800	250.00
\$50	12,925	1,021.28
\$100	4,400	3,000.00
\$300	1,100	12,000.00
\$1,000	110	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.84. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 673 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 673, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601407
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 6, 2006

Texas Parks and Wildlife Department

Notice of Opportunity for Public Hearing and Public Comment

M. Scott Roberts

Application for New TPWD Sand and Gravel Permit

Mr. M. Scott Roberts has applied for a Texas Parks & Wildlife Department (TPWD) Sand and Gravel Permit to remove approximately 60,000 cubic yards of gravel with a front end loader and dump trucks from Onion Creek above the dam about 200 feet upstream from RR 1826 in Hays County near Driftwood beginning no sooner than May 1, 2006. A public hearing will be held on April 11, 2006 at 2:00 p.m. in the Law Library at TPWD Headquarters, 4200 Smith School Road, Austin, TX 78744. This hearing is not a contested case hearing under the Administrative Procedure Act. Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register*

or the newspaper, whichever is later, or at the public hearing. Submit written comments by U. S. mail, by FAX (512) 389-4482, or e-mail: Robert.Sweeney@tpwd.state.tx.us; or by phone (512) 389-4433.

TRD-200601489
Ann Bright
Chief of Staff
Texas Parks and Wildlife Department
Filed: March 7, 2006

Texas Board of Professional Engineers

Record Drawing Policy Advisory Initial Notice for Stakeholders

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby notifies potential stakeholders that it has initiated the process to develop an advisory opinion regarding record drawings. One scenario involves the construction of a subdivision by a developer. The roads and utilities may be installed prior to being annexed by or under the jurisdiction of the local municipality and so they may not be considered public works during construction. However, city officials will require an engineer to seal the plans, upon annexation. The Board does not consider documentation of what was actually constructed to be engineering. If an engineer did not supervise the engineering construction, he will only be able to attest to the accuracy of the drawings with a notation as to what he can actually confirm or observe. Therefore, an engineer may include a caveat on the drawing with a notation as to what he can actually confirm based on the information he can obtain through observation, interviews, samples, and other useful information. Due to the nature of the request,

we expect to have input from those agencies or companies that work on subdivisions and others that may have interest in this topic. The Board has developed a stakeholder process to gather information from professional engineers, consultants and other interested parties. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The Board plans to schedule a stakeholder meeting in April 2006. Stakeholder contact information and comments received during the posting period will be considered in the policy advisory and the scheduling of the stakeholder meeting. Comments and stakeholder information should be directed to:

Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741
Attention: Policy Advisory Staff
Or by e-mail to: peboard@tbpe.state.tx.us
TRD-200601500
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: March 8, 2006

◆ ◆ ◆
Public Utility Commission of Texas

**Notice of Application for Amendment to Service Provider
Certificate of Operating Authority**

On February 27, 2006, KMC Data, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60487. Applicant intends to reflect a change in ownership/control.

The Application: Application of KMC Data, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32456.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 22, 2006. Hearing and Speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32456.

TRD-200601308
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2006

◆ ◆ ◆
**Notice of Application for Service Area Exception in Hansford
County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 2, 2006, for a Certificate of Convenience and Necessity for service area exception within Hansford County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company d/b/a Xcel Energy (SPS) for a Certificate of Convenience and

Necessity for Service Area Exception within Hansford County. Docket Number 32469.

The Application: Mr. Jay Lobit of Distributed Wind Systems, LLC has requested electric service to a single point of service to serve three wind turbines. The proposed site is located in the singly certificated service area of North Plains Electric Cooperative, Inc. (NPEC); however, NPEC does not have available three-phase line in the service area, as requested. SPS is already providing service to this customer and can accommodate the additional load without any substantial investment. NPEC agrees to relinquish its right to serve the three wind turbines only.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 24, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32469.

TRD-200601497
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2006

◆ ◆ ◆
**Notice of Application for Service Area Exception in Wheeler
County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 2, 2006, for a Certificate of Convenience and Necessity for service area exception within Wheeler County, Texas.

Docket Style and Number: Application of Greenbelt Electric Cooperative, Inc. (GEC) for a Certificate of Convenience and Necessity for Service Area Exception within Wheeler County. Docket Number 32467.

The Application: Turner Energy Services, Ltd. is requesting electric service to a single point of service to a saltwater disposal well. The proposed site is located in the singly certificated area of Southwestern Public Service Company (SPS), however, GEC is able to service the consumer without large financial input from the consumer and large construction costs by SPS. SPS agrees to relinquish its right to serve the saltwater well load only.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 24, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32467.

TRD-200601496
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2006

◆ ◆ ◆
**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 24, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Blue Corner Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 32452 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, T1-Private Line, Switch 56 KBPS, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 22, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32452.

TRD-200601307
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2006



Notice of Petition for Waiver of Denial of Request for Number Block

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 3, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of United Telephone Company of Texas, Inc.'s (Sprint) request for one 1,000 number block in the Bridgeport rate center.

Docket Title and Number: Petition of United Telephone Company of Texas, Inc. for Waiver of NeuStar Denial of Number Block Request in Bridgeport Rate Center. Docket Number 32477.

The Application: Sprint requested one 1,000 number block in the Bridgeport rate center to satisfy a customer request.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 24, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32477.

TRD-200601498
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2006



Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 2, 2006, for waiver of de-

nial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Consolidated Communications of Fort Bend Company (CCFB) request for one full NXX in its Katy, Texas exchange.

Docket Title and Number: Petition of Consolidated Communications of Fort Bend Company for Waiver of NeuStar Denial of Number Block Request in Katy, Texas Exchange. Docket Number 32468.

The Application: CCFB requested one full NXX (10,000 sequential numbers) for use with Metro DID numbers requested for various locations within the Katy Independent School District complex. The NXX requested is 281-234-XXXX.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 23, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32468.

TRD-200601499
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2006



Public Notice of Workshop on the Development of the Decommissioning Annual Report Form and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop for Project Number 31429, *Development of the Decommissioning Annual Report Form required by Substantive Rule §25.303(f)(6)*, on Thursday, April 6, 2006, at 10:00 a.m., in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. What type of reports would best provide the commission with annual information pertaining to the status of the nuclear decommissioning trust investment requirements pursuant to P.U.C. Substantive Rule §25.303(e)(3)?
2. Should the current nuclear decommissioning schedule (Schedule XIV) which is part of the current Earnings Monitoring Report be utilized?
3. Should the reporting form require the trustees and/or fund administrators of the decommissioning trusts to file the annual investment reports investment managers/trustees create?
4. Should the reporting form require information on the investment managers (such as investment style, experience, turnover, etc. or one, three, and five-year performance track records; volatility (beta, Sharpe ratio); etc.) chosen to manage trust investments?
5. What type of commission reporting requirements would create an undue burden for the trustees and/or fund administrators who would be required to file the reporting form?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 14 days of the date of publication of this notice. All responses should reference Project Number 31429. The parties' responses to these ques-

tions and comments at the workshop will assist the commission in developing the commission form.

Questions concerning the workshop or this notice should be referred to Richard Lain of the Financial Review Section, Electric Industry Oversight Division, (512) 936-7454. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200601469

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 7, 2006



Texas A&M University System, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from experienced maintenance management consulting firms to provide extensive evaluation of the maintenance and custodial operations of the 650 units of the University Apartments, (including Community Center and Maintenance Building) located on the main campus of Texas A&M University. The President of Texas A&M University has affirmed the necessity to enlist the services of a consultant to evaluate the maintenance operations at the University Apartments.

Information may also be obtained by contacting:

Debi Maeger, C.P.M.

Financial Management Supervisor

Department of Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

or e-mail at d-maeger@tamu.edu

Selection criteria will include methodology, competence, experience, knowledge, references, qualifications, and reasonableness of price.

Proposals must be received on or before 2:00 p.m. central time on April 3, 2006.

TRD-200601488

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University System, Board of Regents

Filed: March 7, 2006



Texas Department of Transportation

Notice of Request for Proposal

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for intercity bus mobility projects funded through the Federal Transit Administration (FTA) §5311(f) intercity bus program. TxDOT anticipates that the Texas Transportation Commission will select multiple projects. Project selection will be administered by the Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The proposer will become a subrecipient of TxDOT.

Purpose: The RFP invites proposals for services to develop, promote, or support intercity bus mobility. The objectives for these proposals are to support the connection between nonurbanized areas and the larger regional or national system of intercity bus service, to support services to meet the intercity travel needs of residents in nonurbanized areas, or to support the infrastructure of the intercity bus network through planning, marketing assistance, and capital investment in facilities. In the process of meeting these objectives, projects must support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between nonurbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by TxDOT in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. These include projects for facilities, vehicle capital, planning, marketing, and operating assistance.

Eligible Applicants: Proposers shall be required to enter into a grant agreement as a subrecipient of TxDOT. Eligible subrecipients include state agencies, local public bodies and agencies, private nonprofit organizations, operators of public transportation services, and private for-profit operators.

Availability of Funds: In accordance with Transportation Code, Chapter 455, TxDOT currently provides funding for intercity bus mobility projects, funded through FTA §5311(f) intercity bus program. Upon full reauthorization of the federal transit appropriations bill, the total amount available is expected to be \$3.9 million dollars.

Work Package: All proposals must demonstrate how they address intercity bus mobility needs. To aid proposers in documenting these needs and developing proposals in response, TxDOT has prepared a work package of intercity bus inventory data, demographics, and thematic maps. The work package is available on the PTN website at <http://www.dot.state.tx.us/ptn/geninfo.htm>. The work package represents the best available data compiled with professional judgment. Data are derived from multiple sources, some of which are known to be incomplete and inaccurate. Part of the reason for publishing this work package is to provide the intercity bus industry with an opportunity to evaluate the accuracy of this compiled data, propose projects to improve or extend the inventories, and to note discrepancies and suggest corrections. Documentation of needs must be based on the TxDOT work package unless an alternative source of data can be demonstrated to be superior.

Review and Award Criteria: Proposals will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, TxDOT is placing no preconditions on the number or on the types of projects to be selected for funding. During the evaluation phase of each proposal, TxDOT reserves the right to conduct formal negotiations pertaining to a proposer's initial responses, specifications, and prices. An approximate balance in funding awarded to the five types of projects, or an approximate geographic balance of selected projects, may be seen as appropriate, depending on the proposals that are received. TxDOT may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

March 24, 2006

RFP Pre-Proposal Meeting 2:00 to 4:00 p.m. at 150 E Riverside, Austin TX

March 29, 2006

Written questions about the proposal are due

April 11, 2006

Written responses to questions posted on PTN website and mailed to all firms who submitted questions

May 2, 2006

Deadline for receipt of proposals

June 7, 2006

Target date for TxDOT to complete the evaluation, prioritization, and negotiation of proposals

July 27, 2006

Presentation of project selection recommendations to the Texas Transportation Commission for its action

August 4, 2006

Target date for all project grant agreements to be executed, with approved scopes of work and calendars of work

Sept. 1, 2006

Target date for all project grant agreements to become effective

To Obtain a Copy of the RFP: The RFP will be posted on the PTN website at <http://www.dot.state.tx.us/ptn/geninfo.htm>. Proposers with questions relating to the RFP should contact Pat Bittner at pbittne@dot.state.tx.us, or by phone at (512) 416-2863.

TRD-200601504

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: March 8, 2006



University of Houston System

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston System, for and in behalf of the University of Houston-Downtown, furnishes this notice of consultant contract award. The consultant will perform a compensation study and develop/implement a new staff compensation plan. Requests for proposals were filed in the December 2, 2005 issue of the *Texas Register*.

The contract was awarded to Deloitte Consulting LLP, 333 Clay Street, Suite 2300, Houston, Texas 77002-4196, for a total amount of \$131,570.

The beginning date of the contract is March 8, 2006 and the ending date is August 1, 2006.

For further information, please call (713) 221-8667.

TRD-200601491

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston System

Filed: March 7, 2006



The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

In accordance with the provisions of Chapter 2254, *Texas Government Code*, The University of Texas System (the "University") is currently seeking a marketing/advertising consultant to help brand and position the University. The University seeks to enhance the public's knowledge and understanding of the breadth and scope of The University of Texas System and its 15 institutions, their impact on the State of Texas in a variety of areas, including healthcare, the economy, K-16 education, and research breakthroughs.

The University is looking for a Proposer to provide the assistance the University requires to conduct research interviews with key audiences and analyze that data, to conduct media planning, and to draft a creative strategy that will be used to develop creative concepts.

The Chancellor has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services; and the University cannot obtain such Consulting Services through a contract with another State governmental entity.

The award for services will be made by the University basing its choice on demonstrated competence, knowledge and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal, the University will give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Invitation for Offers for the consulting services identified in this invitation is:

Melissa Segrest, Director of Communications

The University of Texas System Administration

601 Colorado Street

Austin, Texas 78701

Voice: (512) 322-3775

E-mail: msegrest@utsystem.edu

The proposal submission deadline will be April 7, 2006.

TRD-200601380

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: March 2, 2006



Notice of Entering into a Major Consulting Services Contract

In accordance with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas at San Antonio has entered into a contract for consulting services more particularly described in the Request of Proposal for Consulting Services, published in Volume 30, Number 22, page 3357 of the *Texas Register* on June 3, 2005. The consultant will perform a feasibility study for a football program for The University of Texas at San Antonio.

The name and address of the consultant is as follows:

Carr Sports Associates Inc.

3602 NW 46th Place

Gainesville, Florida 32065

The University will pay a not to exceed amount of \$55,000. The contract will begin on February 3, 2006 and end on June 3, 2006. The consultant is to submit a report by the end of the contract period.

Any questions regarding this posting should be directed to:

Yolanda Miller

The University of Texas at San Antonio

Director

Materials Management Department

6900 North Loop 1604 West

San Antonio, TX 78249

Voice: (210) 458-4975

E-mail: yolanda.miller@utsa.edu

TRD-200601421

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: March 6, 2006



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).